

H.R. 3561 and H.R. 4638

LEGISLATIVE HEARING

BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION

May 22, 2002

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**LEGISLATIVE HEARING ON H.R. 3561, TO
ESTABLISH THE TWENTY-FIRST CENTURY
WATER POLICY COMMISSION; AND
H.R. 4638, TO REAUTHORIZE THE MNI
WICONI RURAL WATER SUPPLY PROJECT.**

**Wednesday, May 22, 2002
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to call, at 2 p.m., in room 1334, Longworth House Office Building, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

**STATEMENT OF HON. KEN CALVERT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. CALVERT. Hearing will come to order. The Subcommittee on Water and Power will come to order. The Committee is meeting today to hear testimony on two bills, H.R. 3561, to establish the Twenty-First Century Water Policy Commission; and H.R. 4638, to reauthorize the Mni Wiconi Rural Water Supply Project.

Mr. CALVERT. Under rule 4(b) of the Committee rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. Since he is not here, I will just take that for the record.

Mr. CALVERT. If other members have statements, they can be included in the hearing record under unanimous consent.

Mr. CALVERT. Today we conduct the hearing on two seemingly unrelated issues. They are different in scale and focus, but are similar because they both look at the way we manage our limited water resources to ensure an adequate supply of safe drinking water. The first bill we look at authorizes a commission to broadly examine our water resources in order to establish a national water resources policy for our future.

There are many Federal, State and local agencies that have responsibility for managing water resources. While there is some overlap of agency responsibility, some argue that there is little coordination among them. At the same time, competing demands for water among various agriculture, urban, recreational and environmental interests have led to many challenges over the last few

decades. H.R. 3561 attempts to reduce those challenges by establishing the Twenty-First Century Water Policy Commission in order to study all aspects of water management on the Federal, State, local and private levels. The Commission would also develop recommendations for a comprehensive water policy to ensure an adequate water supply of fresh water for U.S. Citizens over the next 50 years.

The second bill looks to complete a water project to serve a vast area of the Midwest that currently lacks drinkable water. While most of us take running water in our homes for granted, there are many areas in the rural portions of the United States who do not even have access to indoor plumbing or water supplies that meet safe drinking water standards. H.R. 4638 reauthorizes the Mni Wiconi Rural Water Supply Project by extending the date for the completion of the project to 2008 and increasing the authorization ceiling by \$58.8 million. This proposed legislation would provide authority for the completion of this project, and I look forward to hearing from our witnesses.

And before I get into that, I know that Mr. Linder has shown great interest in this country about the inadequate water supply that we do have and the coming crisis that we have in many areas of the country. Not just California and the West suffers from water difficulties. We were just in Texas a few weeks ago on the Rio Grande where we have an ongoing dispute right now, which hopefully is getting positively resolved. We have a meeting this afternoon on the Rio Grande in south Texas, and certainly issues in Mr. Linder's part of the country, in Florida, Georgia and other parts of the country, where again water adequacy is being challenged.

So I compliment the gentleman for his hard work in this, and I think we move into this, and obviously there are some concerns about—before we get to your opening statement about the so-called Federalization of water rights. And I know that is not your intent, and you may want to talk about that. We certainly recognize State water rights, and we want to protect them, but at the same time have a better coordination of water and planning throughout this country.

I think it would be great, by the way, since no one here is to speak—hi, how are you—is that we should name this the Linder Commission. I haven't asked John about this, but I think that would be appropriate since you have shown such great interest in this.

[The prepared statement of Mr. Calvert follows:]

**Statement of The Honorable Ken Calvert, Chairman,
Subcommittee on Water and Power**

Today we will conduct a hearing on two seemingly unrelated issues that are different in scale and focus, but are similar because they both look at the way we manage our limited water resources to ensure an adequate supply of safe drinking water. The first bill we will look at authorizes a Commission to broadly examine our water resources in order to establish a national water resources policy for our future.

There are many Federal, state and local agencies that have responsibilities for managing water resources. While there is some overlap of agency responsibilities, some argue that there is little coordination among them. At the same time competing demands for water among various agricultural, urban, recreational and environmental interests have led to many challenges over the last few decades.

H.R. 3561, attempts to reduce those challenges by establishing the “21st Century Water Policy Commission” in order to study all aspects of water management on the Federal, state, local, and private levels. The Commission would also develop recommendations for a comprehensive water policy to ensure an adequate supply of fresh water for U.S. citizens over the next 50 years.

The second bill looks to complete a water project to serve a vast area in the Midwest that currently lacks drinkable water. While most of us take running water in our homes for granted, there are many areas in rural portions of the United States that do not even have access to indoor plumbing or water supplies that meet safe drinking water standards.

H.R. 4638, reauthorizes the Mni Wiconi Rural Water Supply Project by extending the date for the completion of the project to 2008, and increasing the Authorization ceiling by \$58.8 million. This proposed legislation will provide the authority for the completion of this project.

I look forward to hearing from the witnesses.

Mr. CALVERT. With that I would be more than happy to recognize the gentleman for his statement.

**STATEMENT OF HON. JOHN LINDER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF GEORGIA**

Mr. LINDER. Thank you, Mr. Chairman. I want to thank you and the members of this Subcommittee on Water and Power for holding this hearing on H.R. 3561, the Twenty-First Century Water Policy Commission Establishment Act. I appreciate your giving me the opportunity to present my ideas and objectives for this bill as well as giving me the opportunity to receive constructive feedback on this important legislation.

During the past few months, I have read story after story in our Nation's papers about fresh water crises. Nearly half of the United States is currently experiencing drought conditions. Rivers and wells are drying up, aquifers are challenged by saltwater intrusion, and fish, wildlife and crops are threatened. These droughts are temporary problems, but their impacts signal the state of things to come as population growth and development challenge our Nation's fresh water resources in the 21st century. Our water resources will be utilized to their fullest capacity in the coming decades, and current water supplies will prove inadequate. It is important that we develop a strategy to meet future water demand now before the full-blown water shortage hits.

Over the past couple of decades I have given much thought to the impending shortage of fresh water in the Nation. As we enter the 21st century, I am convinced we must act now to prepare for the coming water crisis. I have introduced H.R. 3561 to take the first small step toward meeting 21st century water challenges. I realize that getting fully prepared for future water challenges will take years and possibly decades. We need to begin this process today by taking the small step of gathering together water experts and policymakers to initiate a dialog on how to address this problem.

My Twenty-First Century Water Policy Commission bill would create a commission to evaluate future water demand and supply, to consider innovative water research and technologies, and to recommend possible solutions to future water shortages. The last commission to consider water resources with such a comprehensive approach completed its work in 1973. That commission contributed much to our Nation's water policies. The United States and its re-

sources, however, have changed dramatically over the past three decades. It is certainly time to reassess America's water.

H.R. 3561 is designed to bring our Nation's premier water experts and managers together to the discussion table to share their ideas for the future. According to Harvard Professor Peter Rogers, in the early 1990's there were 90,000 Federal employees working to solve water problems, with three times as many individuals working on water at the State and local level. Add to that the 50,000 private sector employees also working on water issues, and you can begin to develop a sense for how unwieldy this issue has become. Unfortunately these hundreds of thousands of water experts rarely communicate among themselves or coordinate their efforts. As we work to plan and prepare for future demands placed on our fresh water resources, it will be critical that we share information, coordinate efforts and reduce duplication and conflict among those agencies.

I believe that the first step toward meeting these goals is getting everyone together at the discussion table. I understand that we could spend years arguing over the appropriate size and shape of the table even before we begin the debate of who deserves a seat at the table, but remember that the clock is ticking. The longer it takes us to begin to make preparations for the future, the less prepared we will be when it comes. And it is coming.

In John Steinbeck's novel *East of Eden*, the narrator observes, "And it never failed that during the dry years people forget about the rich years, and during the wet years they lost all memory of the dry years. It was always that way." I have been told over and over again that the United States only reevaluates its water policies when a crisis hits. I know that my efforts to begin preparations for the future will be met with resistance by many who fear change, but resistance to planning for future water shortages is a recipe for disaster. One day you may turn your tap and discover that no water emerges. We must begin now to advance the science and knowledge that will be necessary to deal with 21st century water challenges.

I in no way believe the Federal Government's authority over water should be increased at the States' expense. I believe water is a local issue. I respect the States' traditional primacy over water management and allocation. However, the Federal Government does have an obligation to serve as a resource for the States by supporting research and providing a forum through which research may be shared by helping to finance necessary infrastructure construction and improvement, and by reducing red tape and better coordinating Federal water agencies and programs.

H.R. 3561 was drafted to serve as a basic model, which I hope to improve upon with your suggestions. Mr. Chairman, members of the Subcommittee, I come before you today to ask for your input on how can we best shape this commission. This is the first step toward solving our Nation's impending water problems. I hope you will support my objective of ensuring an adequate and dependable supply of fresh water for all Americans throughout the 21st century, and I hope you will share your insights on the best approach to this challenge so we may avoid the pitfalls of past commissions.

We simply cannot afford to maintain the status quo with regard to our Nation's fresh water resources. If we fail to prepare for impending water shortages, we may be faced with a crisis of astronomical proportions in the coming decades. Providing all Americans with fresh water is a matter of life and death for the future of the United States. The time is now. Thank you, Mr. Chairman.

Mr. CALVERT. I thank the gentleman.

[The prepared statement of Mr. Linder follows:]

**Statement of The Honorable John Linder, a Representative in Congress
from the State of Georgia**

I wish to thank Chairman Calvert, Ranking Member Smith, and the other members of the Subcommittee on Water and Power for holding today's hearing on H.R. 3561, the 21st Century Water Policy Commission Establishment Act." I appreciate your giving me the opportunity to present my ideas and objectives for this bill, as well as giving me the opportunity to receive constructive feedback on this important legislation.

During the past few months, I have read story after story in our nation's newspapers about fresh water crises. Nearly half of the United States is currently experiencing drought conditions. Rivers and wells are drying up, aquifers are challenged by saltwater intrusion, and fish, wildlife, and crops are threatened. While these droughts are temporary problems, their impacts signal the state of things to come as population growth and development challenge our nation's fresh water resources in the 21st century. Our water resources will be utilized to their fullest capacity in the coming decades, and current water supplies will prove inadequate. It is important that we develop a strategy to meet future water demand now, before the full-blown water shortage hits.

Over the past two decades, I have given much thought to the impending shortage of fresh water in our nation. As we enter the 21st century, I am convinced that we must act now to prepare for the coming water crisis. I have introduced H.R. 3561 to take the first small step toward meeting 21st century water challenges. I realize that getting fully prepared for future water challenges will take years, possibly decades. We need to begin this process today by taking the small step of gathering together water experts and policy makers to initiate a dialogue on how to address this problem.

My 21st Century Water Policy Commission bill would create a commission to evaluate future water demand and supply, to consider innovative water research and technologies, and to recommend possible solutions to future water shortages. The last commission to consider water resources with such a comprehensive approach completed its work in 1973. That commission contributed much to our nation's water policies. The United States and its resources, however, have changed dramatically over the past three decades. It is certainly time to reassess America's water.

H.R. 3561 is designed to bring our nation's premier water experts and managers together to the discussion table to share their ideas for the future. According to Harvard Professor Peter Rogers, in the early 1990s there were 90,000 Federal employees working to solve water problems, with three times as many individuals working on water at the state and local level. Add to that the 50,000 private-sector employees also working on water issues, and you can begin to develop a sense for how unwieldy this issue has become. Unfortunately, these hundreds of thousands of water experts rarely communicate among themselves or coordinate their efforts. As we work to plan and prepare for future demands placed on our fresh water resources, it will be critical that we share information, coordinate efforts, and reduce duplication and conflict among those agencies. I believe the first step toward meeting these goals is getting everyone together at the discussion table.

I understand that we could spend years arguing over the appropriate size and shape of the table, even before we begin the debate of who deserves a seat at that table. But remember that the clock is ticking. The longer it takes us to begin to make preparations for the future, the less prepared we will be when crisis comes—and it is coming.

In John Steinbeck's novel, *East of Eden*, the narrator observes, "And it never failed that during the dry years the people forgot about the rich years, and during the wet years they lost all memory of the dry years. It was always that way." I have been told over and over again that the United States only reevaluates its water policies when a crisis hits. I know that my efforts to begin preparations for the future

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H.R. 3561 was drafted to serve as a basic model, which I hope to improve upon with your suggestions. Mr. Chairman, members of the Subcommittee, I come before you today to ask for your input on how we can best shape this commission—this first step toward solving our nation's impending water problems. I hope that you will support my objective of ensuring an adequate and dependable supply of fresh water for all Americans throughout the 21st century, and I hope you will share your insights on the best approach to this challenge so we may avoid the pitfalls of past commissions.

We simply cannot afford to maintain the status quo with regard to our nation's fresh water resources. If we fail to prepare for impending water shortages, we may be faced with a crisis of astronomical proportions in the coming decades. Providing all Americans with fresh water is a matter of life and death for the future of the United States. The time for action is now.

MEETING AMERICA'S FRESH WATER NEEDS

REPRESENTATIVE JOHN LINDER

Many states across the nation currently face water crises. Some of the most severe droughts in recorded history have struck the East Coast and some western states, leaving water levels intolerably low in lakes and drying up rivers. Furthermore, overzealous groundwater pumping from fresh water aquifers across the nation is leaving aquifers dry or threatened by saltwater intrusion. Meanwhile, projected population growth for the United States indicates that water demand will continue to increase in coming years. It is critical that states across the nation find ways to "create" more fresh water to meet growing needs.

I have introduced a bill in the U.S. House of Representatives to help all states to prepare for 21st century demands on our nation's finite water resources. My bill, H.R. 3561, would create a commission charged with researching and recommending to Congress a comprehensive water policy to meet 21st century water needs. The "21st Century Water Policy Commission" would include representatives of Federal, state, and local water management agencies, as well as private sector and environmental organizations that deal with water problems. This group would be responsible for recommending measures to ensure an adequate supply of fresh water for all Americans over the next 50 years.

I believe the Federal Government can help states to prepare for pending water crises by funding research into new technologies, such as aquifer recharge, desalination, efficient irrigation techniques, wastewater reuse, and wetlands creation. Further, the Federal Government can provide a forum through which water research can be transmitted from one state to another. As such, the 21st Century Water Policy Commission would be charged with evaluating all available technologies for increasing water supplies efficiently, while safeguarding the environment, in order to promote research into new technologies.

In addition, if promising projects or technologies are presented, the Federal Government can provide the initial funding needed for communities to construct necessary facilities. Another goal of the 21st Century Water Policy Commission would be to evaluate financing options, such as user-fees, for such public works projects.

Finally, the Federal Government can help communities to expand their water resources by reducing red tape and better coordinating Federal water agencies and programs. Currently, local officials desiring to create new water programs face Federal bureaucratic challenges, Federal regulatory boundaries, and red tape at every turn. The 21st Century Water Policy Commission would be charged with developing recommendations for eliminating duplication and conflict among governmental agencies.

Through all of these responsibilities, H.R. 3561 takes the first step toward helping all Americans to face future water emergencies proactively. States across the nation will meet with water crises in the coming years, and they will all have to find ways to use water more efficiently, capture more water, and reuse water multiple times before it flows out to sea. My 21st Century Water Policy Commission bill offers a ray of hope for all states challenged by their finite water resources.

Mr. CALVERT. Little bit of business to put away, and I would like to ask the gentleman from Georgia a couple of questions. First, Mr. Thune will have an opening statement shortly, and after that statement I would like to ask unanimous consent that Congressman Linder and Congressman Thune be permitted to sit on the dais following their statements for as long as they wish to participate with the witnesses that we will be bringing forward.

Hearing none, so ordered.

One quick question, and if anyone else would like to ask a question.

Mr. Linder, first I would like to compliment you on your opening statement. Vision is an important thing, though we tend to forget about it around here. Sometimes we get involved in the short-term crises that we have in our districts and in our States, and certainly momentary problems we have in this country. But water is something that we are seeing less of and more problems arising because of that limited commodity. And I certainly think that—recognizing, as you have in your statement—that State rights are extremely important, and we have no intention of violating that, and working with agencies both on the Federal side and the State side and local agencies to come up with a comprehensive policy on how we are going to meet the demands of the 21st century and beyond.

So I guess you could reiterate for the record that, again, you have no intention of violating State water rights.

Mr. LINDER. This is uniquely a State and local issue, but the Federal Government can provide some resources and then, frankly, some money down the road if there are large regional projects that need to be funded and paid for, just like we did the Eisenhower highway system with user fees collected through the Federal excise taxes on gasoline. And I would pull this bill off the table tomorrow if it were somehow drawn into a Federal controllable water system.

I tell people that inter-basin transfers are the kinds of things over which wars are fought. We want to find more water for every basin and leave the control of that basin to the local community, but we need more storage; above-ground storage perhaps, below-ground storage perhaps, aquifers perhaps. Georgia's most valuable natural resource is an aquifer that had salt water creeping into it from the Gulf. We need to recharge those aquifers. All kinds of communities are trying different kinds of things, and we need to bring that technology and science together at the same table so we can compare what works and what doesn't work. We may need to provide some infrastructure support for the large urban areas that are losing upwards of 20 to 25 percent of their water through leaks in the current old infrastructure.

I don't know what the answer is going to be. I have a lot of questions and very few answers. So my hope is we can get people around the same discussion table and start talking about the possi-

bilities of using the knowledge that some people have developed in other parts of the country.

Mr. CALVERT. I compliment the gentleman and look forward to making sure that we put together the Linder Commission in the way that people will be looking forward to the way that it is fashioned.

Mr. Thune, you may begin your statement.

STATEMENT OF HON. JOHN R. THUNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. THUNE. Thank you, Mr. Chairman, and I want to—and members of the Committee. I want to thank you for holding this hearing to review H.R. 4638, which is a bill that will extend the authorization of the Mni Wiconi Rural Water Supply Project. I introduced this bill on May 1 of this year because it is critical to finishing the project, which is over 50 percent complete. H.R. 4638 will increase the authorization ceiling of the project by \$58.8 million and extend the sunset date of the project from 2003 to 2008. This project will bring healthy, safe drinking water and the potential for greater prosperity to over 50,000 South Dakotans, most of whom live in some of the most economically depressed communities in America.

The Mni Wiconi Rural Water Supply Project is made up of four separate rural water supply systems: Oglala, Rosebud, Lower Brule and West River/Lyman-Jones. Each of the four project sponsors are represented in the audience and at the witness table today. Their attendance today illustrates the unified support this project has from the Native American and nontribal communities throughout the Mni Wiconi project area.

The three tribal sponsors have chosen Frank Means to testify on their behalf. Frank is a councilman for the Oglala Sioux Tribe and chairs the tribe's economic and business development committee. Mike Kurlle will be testifying on behalf of the nontribal sponsor. Mike is manager of the West River/Lyman-Jones rural water system. I would also like to recognize Jim McCauley, director of the Lower Brule Rural Water Supply System; Cyatt Hut, director of the Rosebud's Sioux Rural Water System; Paul Little, Oglala Sioux Tribe; and Mike Watson the lead project engineer. Blaine Brewer, who is acting director of the Oglala Sioux Rural Water Supply System was unable to make it today due to a family emergency.

Mr. Chairman and members of the Committee, Mni Wiconi translates into "water is life." the poor quality of the drinking water in many communities throughout the project area has been the cause of waterborne illnesses for some time. The need for this project is simple, healthy, safe water.

Mr. Chairman, I appreciate your willingness to consider H.R. 4638 and the opportunity today to introduce to you this critically important project in South Dakota and the people that keep it moving forward every day. Thank you.

Mr. CALVERT. I thank the gentleman.

[The prepared statement of Mr. Thune follows:]

Statement of The Honorable John R. Thune, a Representative in Congress from the State of South Dakota

Mr. Chairman, I want to thank you for holding this hearing to review H.R. 4638, a bill that will extend authorization of the Mni Wiconi Rural Water Supply Project.

I introduced this bill on May 1, 2002, because it is critical to finishing the project, which is over 50 percent complete. H.R. 4638 will increase the authorization ceiling of the project by \$58.8 million and extend the sunset date of the project from 2003 to 2008.

This project will bring healthy, safe drinking water and the potential for greater prosperity to over 50,000 South Dakotans, many of whom live in some of the most economically depressed communities in America.

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Each of the four project sponsors are represented in the audience and at the witness table today. Their attendance today illustrates the unified support this project has from the Native American and non-tribal communities throughout the Mni Wiconi project area.

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Mike Kurlle will be testifying on behalf of the non-tribal sponsor. Mike is manager of the West River/Lyman-Jones Rural Water System.

I would also like to recognize Jim McCauley, Director of the Lower Brule Rural Water Supply System; Syed Huq, Director of the Rosebud Sioux Rural Water System; Paul Little, Oglala Sioux Tribe; and Mike Watson, the lead project engineer.

Duane Brewer, Acting Director of the Oglala Sioux Rural Water Supply System, was unable to make it today due to a family emergency.

Mr. Chairman, Mni Wiconi translates into "Water is Life." The poor quality of the drinking water in many communities throughout the project area has been the cause of water borne illnesses for some time. The need for this project is simple—healthy, safe water.

Mr. Chairman, I appreciate your willingness to consider H.R. 4638 and the opportunity to introduce you to this critically important project in South Dakota and the people that keep it moving forward every day.

Mr. CALVERT. We ask you both to join us here on the dais, and ask the Members here if they have any questions.

Ms. SOLIS. Thank you, Mr. Chairman. Thank you for having this hearing and also the timeliness of the presentation by Congressman Linder.

Thank you for coming and expressing your concerns on providing a better management of our water supply. I am very concerned about this issue as well as and been working with our chairman on the CALFED project in California, and because of the drought and other issues, storage, that we are faced with, obviously growing populations, that is somewhat my perspective from southern California.

I am concerned about the Commission, though, in terms of some of the items that I look at in terms of how user fees would be applied to low-income communities. It would be a hardship, I think, in some areas, and not just in southern California, but in other parts of the country where you have low-income populations or rural areas that can't come up with the fees to pay for the construction of these projects. So that would be one of my concerns that perhaps the Commission could take up to make sure that that is represented in their goals and in the structure there.

And the other would be the differences between private and public providers in terms of conservation and how that is conducted. And if, in fact, public entities are not making a profit because they are conserving water and private providers make a profit because they sell water, then how do we make that nexus come together so we are working on the same goals so that we do have a fair and equitable process in place? Those would be my concerns.

Mr. LINDER. First of all, we pay user fees for water now, in every jurisdiction I am familiar with. I get a water bill in my home in Georgia on a monthly or bimonthly basis. The idea behind the user fee language is that if the Federal Government helps a region with a large infrastructure project, storage project or fixing pipes, it would bond that money, I assume, over a period of time and then pay it back with the fees for the people who are using water.

But I am perfectly willing for this Commission to work through those issues you raised. As I said, I want to start the first small step on the way to get everyone at the same discussion table. We looked over the last several years how the interstate highway system was built and how that huge engineering project was pulled off, and it is a great, great asset to this country today. We discovered that the Eisenhower Interstate Highway System was actually started in 1938 by FDR with a commission to bring together some experts to consider how to move people around this growing country. And it was added to by Truman, and Eisenhower got the credit because he decided that the way to fund it was to pass an excise tax on gasoline so that people who used most of the roads would pay for most of the costs. That is the whole idea behind the user fee.

But I am perfectly willing to let this Committee shape this Commission or help shape this Commission in a way that you think would be more responsive and let the Commission deal with these questions. I envision a commission that may take longer than a year. We need to talk about that. But I envision a commission that ultimately comes up with some recommendations and then moves on to a bigger committee, and bringing all the engineering and hydrological skills in before we start any project.

The very first step we can take is toward conservation. It is a very inexpensive way to do it, and we can let the governments and the private sectors be treated alike on this. But I think the Commission should take all the questions that you raised to their table and deal with them.

Ms. SOLIS. Just one other comment. I understand that there was a water policy commission that was set up in the past in 1998, but few of those recommendations were ever followed up on. How would this be different from that?

Mr. LINDER. That is our job. If they make recommendations, and we refuse to follow those recommendations, we have fallen down. A lot of recommendations were made by the Committee that was started in 1965 and ended in 1982. Many of those recommendations were not followed, but some were, and they made great improvements in water policy at the time. It is their job to get the answers and our job to consider and implement those answers.

Ms. SOLIS. Look forward to seeing the results of that.

Mr. CALVERT. Gentleman from Nebraska?

Mr. OSBORNE. No questions.

Mr. CALVERT. Our second panel will now be introduced: John W. Keys, the Commissioner, Bureau of Reclamation, U.S. Department of Interior. Good afternoon, Commissioner Keys. You may begin your testimony whenever you like.

**STATEMENT OF JOHN W. KEYS, COMMISSIONER, BUREAU OF
RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR**

Mr. KEYS. Mr. Chairman, thank you very much. I am John Keys, Commissioner of the Bureau of Reclamation, and I am certainly pleased to be here to present the Department of the Interior's views on H.R. 3561, legislation that would establish the Twenty-First Century Water Policy Commission. I would ask that my full written statement be included in the record.

Mr. CALVERT. Without objection, so ordered.

Mr. KEYS. Mr. Chairman, the Department supports efforts as in H.R. 3561 to plan for our Nation's future water needs. With the continued drought that we are experiencing all over the country this year, we see that there is little doubt in the challenge for the 21st century in us delivering good water to all of our people. Reclamation and other Interior agencies bring both experience and expertise to support such an effort.

Mr. Chairman, for the past century, Reclamation has played an integral role in the development of Federal water management policy. Congress authorized early Reclamation water projects to help settle the arid West. Over the course of this 100 years of service, Reclamation has become the largest water resources management agency in the West, delivering 30 million acrefeet of water annually from 348 reservoirs. Our projects supply water to more than 31 million people and about one-third of the irrigated agriculture in 17 Western States. The Bureau's 58 power plants produce more than 42 billion kilowatt hours of electricity every year, making it the second largest hydropower utility in the United States. We have a presence in every major river basin in the West, and we work with State water rights, interstate compacts, judicial decrees, international treaties, interstate and interbasin projects, and the water service that we provide complies with all Federal water rules and regulations, the National Environmental Policy Act, the Clean Water Act, Endangered Species Act and others that are there.

Mr. Chairman, we welcome the opportunity to work with the Twenty-First Century Water Policy Commission. Secretary Norton and I pledge our support to help make it successful. Mr. Chairman, one suggestion for the Commission. Interior and the Bureau of Reclamation work in an environment of cooperation with State, tribal and local governments. H.R. 3561, with respect to water in the 17 Western States, should formally recognize the primacy of State law in the allocation of water. Also, given that primacy of the States in western water law and management, we feel that membership of any commission under H.R. 3561 should include several additional representatives from the States.

Mr. Chairman, that concludes my statement on 3561. If you would like, I can go right into the next one, or would you like me to answer questions now?

Mr. CALVERT. Go ahead to the next bill.

Mr. KEYS. Mr. Chairman, the next part of the testimony deals with H.R. 4638, reauthorization of the Mni Wiconi Rural Water Supply Project. Again, I would ask that the full text of my written statement be included in the record.

Mr. CALVERT. Without objection.

Mr. KEYS. This project serves the Pine Ridge/Rosebud and Lower Brule Indian reservations and seven counties in southwestern South Dakota. H.R. 4638 would increase the authorization ceiling for the project and extend by 5 years the time period for which appropriations are authorized. Since the project cannot be completed without these changes, the Department of the Interior supports enactment of H.R. 4638.

The Mni Wiconi Rural Water Project was authorized in 1988 and included the Oglala Sioux Rural Water System, the Oglala Sioux core system, the West River supply system and the Lyman-Jones Rural Water System. The Mni Wiconi Project was expanded in 1994 to include the Rosebud Sioux and Lower Brule Sioux Rural Water Systems. The authorizations intended construction to be completed within 10 years, and appropriations were authorized through Fiscal Year 2003; however, annual appropriations have been insufficient to complete construction within the timeframe originally laid out in the final engineering report.

H.R. 4638 extends to the year 2008 the authorization for appropriations to complete the project. The bill also increases the authorized ceiling by \$58.8 million, from \$345,997,000 to \$404,797,000, to provide the necessary appropriations.

Mr. Chairman, the administration is firmly committed to completing the Mni Wiconi Rural Water Supply Project. We strongly support H.R. 4638.

That concludes my oral statement on that one, and I would certainly stand to questions on either one of the bills.

Mr. CALVERT. Thank you, Commissioner.

[The prepared statement of Mr. Keys on H.R. 3561 follows:]

**Statement of John W. Keys, III, Commissioner, Bureau of Reclamation,
U.S. Department of the Interior, on H.R. 3561**

My name is John Keys and I am Commissioner of the U.S. Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior on H.R. 3561. This bill would establish the Twenty-First Century Water Policy Commission to study water management throughout the nation and develop recommendations for a comprehensive water policy. The Department supports efforts, as in H.R. 3561, to plan for our nation's future water needs. The American people would benefit from efforts to bring together qualified people to look at what information we have, analyze trends, and find out what's on the cutting edge of water use, reuse, and all aspects of water management. Reclamation and other Interior agencies bring both experience and expertise to support such an effort.

A tremendous amount of research on water needs and management already has been done. In addition, numerous Federal, state, tribal, local and private organizations are trying to determine how best to meet their future water needs. At the Department of the Interior, Secretary Norton is currently in the process of analyzing how to meet water needs in the western states over the next 25 years.

What we need most is to have qualified people—including representatives of academia; science and technology; legal, environmental, and community organizations; state, tribal, Federal, and local governments—compile and analyze existing water use management data, examine population trends, identify existing technologies as well as research & development on advances in water-related technologies.

As the Subcommittee considers H.R. 3561, we encourage you to keep in mind the responsibilities that Congress (and the judiciary, in some cases) has placed on the Department of the Interior. The Secretary of the Interior, for example, is the Water Master for the Colorado River. For the past century, Reclamation has played an integral role in the development of Federal water management policy.

Congress authorized early Reclamation water projects to help settle the arid lands of the American west, by providing water for irrigation. Over the course of this century of service, Reclamation has become the largest water resources management agency in the west, delivering 30 million acre-feet annually from 348 reservoirs.

Reclamation projects supply water to more than 31 million people and one-third of irrigated agriculture in the western states. The Bureau's 58 power plants produce more than 42 billion kilowatt hours per year, making Reclamation the 2nd largest hydropower utility in the United States. Reclamation has a presence in every major river basin in the west, and is responsible for implementing, as delegated by the Secretary of the Interior, interstate compacts and judicial decrees, international treaties, and interstate and interbasin projects.

Reclamation takes great pride in providing these water-related services to the public. The Bureau is constantly working, often in partnership with states and other non-Federal entities, to improve water management in order to meet ever-increasing demands for water from Reclamation projects. Reclamation works in an environment of cooperation with state, tribal, and local governments and other Federal agencies. Given the deference to state law in the allocation of water, membership on any commission should include several additional representatives from the states. Also, tribal representation should be assured.

As a long-time leader in water management and delivery in the West, Reclamation works with its contractors and customers, state, local, and tribal governments, as well as other Federal agencies, to assess and meet future water needs; and with municipal and rural domestic water consumers to deliver clean drinking water. We are partnering with qualified entities on finding innovative and cost-effective ways to recover otherwise non-potable water in water-short areas of our country. Reclamation is committed to delivering water under our contracts, meeting applicable environmental laws, and abiding by state water laws in the process.

Thank you for this opportunity to comment. I will be glad to answer any questions.

[The prepared statement of Mr. Keys on H.R. 4638 follows:]

**Statement of John W. Keys, III, Commissioner, Bureau of Reclamation,
U.S. Department of the Interior, on H.R. 4638**

I am John Keys, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to present the views of the Department of the Interior on H.R. 4638, concerning authorization of the Mni Wiconi Rural Water Supply Project. This Project serves the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and seven counties in southwestern South Dakota. H.R. 4638 would increase the authorization ceiling for the Project and extend by five (5) years the time period for which appropriations are authorized. Since the Project cannot be completed unless these changes are made, the Department supports enactment of H.R. 4638.

The Mni Wiconi Rural Water Supply Project was authorized in 1988 (P.L.100-516) and included the Oglala Sioux Rural Water System, the Oglala Sioux Core System, the West River Rural Water System, and the Lyman-Jones Rural Water System. The Mni Wiconi Project was expanded in 1994 (P.L.103-434, Title VIII) to include the Rosebud Sioux and Lower Brule Sioux Rural Water Systems.

The authorizations intended construction to be completed within 10 years, and appropriations were authorized through 2003. However, annual appropriations have been insufficient to complete construction on the Project within the time-frame originally planned in the Final Engineering Report.

H.R. 4638 extends to the year 2008 the authorization for appropriations to complete the project. The bill also increases the authorized ceiling by \$58.8 million to cover expenses that were not identified until after the sponsors (the Oglala, Rosebud and Lower Brule Sioux Tribes and West River/Lyman-Jones Rural Water Systems) released their Final Engineering Report, plus estimated administrative costs related to the extension from 2003 to 2008.

Mr. Chairman, the Administration is firmly committed to completing the Mni Wiconi Rural Water Supply Project. If H.R. 4638 is not enacted, the authority for appropriations will expire in 2003; Project construction would be shut down and the full benefits of the Project would not be realized. Only a portion of the Project population would be served water. If the expiration date is extended without a corresponding increase in the cost ceiling, the project would have to be redesigned to determine which features could be constructed within the available ceiling. This unfortunate prospect may be averted if H.R. 4638 is enacted, and I reiterate the Department's support for the bill.

This concludes my statement, and I would be glad to answer any questions.

Mr. CALVERT. Since you have been on the job, you have had a number of crises that were put on your plate, and I compliment you on how you have dealt with them, but nevertheless, many of these are because of the lack of water and other demands, one of which has, of course, caused a lot of problems up in Klamath in southern Oregon and northern California. And we have other crises that could occur. As you know, Lake Mead is at a very low level. I understand it is at the lowest level that it has been since 1970; is that correct?

Mr. KEYS. That is correct.

Mr. CALVERT. If we don't get some late-season rain, it is very likely we could have some severe drought problems in the States that are serviced by that area; is that also true?

Mr. KEYS. Mr. Chairman, it does not depend on whether we get rain this summer. We are already in that drought situation in most of the Western States. The last count we had, there were five of the States that have already declared emergencies there or disaster emergencies, and we are working closely with them on their drought program.

Mr. CALVERT. It can only get worse from this point forward more likely?

Mr. KEYS. That is right.

Mr. CALVERT. And in all of the States that we deal with on this Committee and certainly in your job, you are having to work with Federal law all the time, Clean Water Act, Clean Drinking Water Act, and certainly the Endangered Species Act, which is causing difficulties on how we manage our water resources. So do you believe a commission such as the one that Congressman Linder is proposing—I am sure Mr. Linder would be happy to work with you and other folks to fashion this Commission where people in States are not threatened—feel threatened that their water rights are being threatened or their operations are being threatened. They are also recognizing that they are having to deal now with Federal law in how they are managing their resources, and this could be helpful to them in those challenges ahead. Do you think that is correct?

Mr. KEYS. Mr. Chairman, I certainly do. If you look at the history of Reclamation, section 8 of the 1902 Reclamation Act says that when we build a project, we have to obtain a State water right, and then after the project is in construction, to operate that project within that State water right. Over the 100 years that Reclamation has been there, we have been very successful at doing that. Since NEPA was passed in 1969, since the Clean Water Act was passed in the 1970's and the Endangered Species Act in the 1980's, we think we have been successful in walking that line of accommodating those regulations, at the same time meeting our contracts.

The situation at Klamath this last year is the first time that we have not been able to meet those contracts because of one of those laws. We have worked very diligently on that since last year, and we are delivering water this year in full compliance with the Endangered Species Act. We think we have an expertise and experience that we could bring to this Commission that would show how to do some of those things and, we think, do them productively.

Mr. CALVERT. I am sure—in fact, if this goes forward, and the Linder Commission moves ahead—and I am sure that your Department is going to be a very integral part of that. And certainly we have issues, as I discussed in my opening statement, on the Rio Grande with foreign countries. We have a difficult problem right now, a matter of meeting with the Governor of the Chihuahua a little later this afternoon, I believe, in trying to resolve that issue. So these are difficult problems we have to deal with.

Ms. Solis, do you have any questions?

Ms. SOLIS. Actually I would just like to request unanimous consent, Mr. Chair, to submit for the record some materials, a final report of the Western Water Policy Review Advisory Commission and report of the Water Policy Conference sponsored by the University of Colorado School of Law.

Mr. CALVERT. Without objection, so ordered.

[NOTE: The two reports referenced above have been retained in the Committee's official files.]

Mr. CALVERT. Mr. Linder?

Mr. LINDER. I would just like to make the comment that I would welcome your suggestions for people you think should be represented on the commission. I would also welcome your coming up with some language that you are comfortable in your Department to make sure we protect State rights. I have talked to a couple of folks about that, and I know it is an important issue. I want to do whatever we can statutorily to protect the States' water rights.

Mr. KEYS. Mr. Chairman, Mr. Linder, we will certainly provide to you with that language and some suggestions for the membership there.

Mr. LINDER. Thank you.

Mr. CALVERT. Mr. Osborne, any questions?

Mr. OSBORNE. Nice to see you again, Mr. Keys. Thank you for being here. You and I are regular conversers, I guess, and you probably know what I am going to go talk about.

The Klamath Basin issue has been raised previously, and obviously this was a matter of great deal of concern to farmers, some embarrassment maybe to Interior. And I guess my perception is that had we had more accurate data—if the National Academy of Sciences study had been done before last summer, might have headed off some of the issues where we diverted a lot of water down the Klamath River, which didn't help the coho salmon.

And as I told you many times, we have what I think is an analogous situation in the Platte River in Nebraska where, because of the Endangered Species Act, we now have instream flow requirements that require 140,000 acrefeet of water down the Platte River, much of which is not used for irrigation, and we really don't think it complies—that the Endangered Species Act is being accurately applied here. We have talked to Fish and Wildlife, and we have put in an application for a study, and so often what seems to happen is that Fish and Wildlife is going to back up Fish and Wildlife.

And so we think it is absolutely critical that we have something done here because the ultimate plan is for Fish and Wildlife to control 416,000 acrefeet of water in the Platte River, which is equivalent to all of the water used in the State of Nebraska in regard to

irrigation of the Platte River; shuts down the whole valley and would be a huge economic consequence.

And so, again, I would like to reiterate my concern in the fact that I think all of us can save a great deal of heartache and concern and an accurate application of the law if we get a study done. And as you know, I have been pushing for it. So I guess my mode of operation at the present time is keep talking about it until someone does it. So I wanted to bring that up again.

And as I see the whole situation in the West right now, we have, as you have mentioned, a situation of widespread drought, and the Endangered Species Act, as I see it right now, has huge implications for that whole area. And no one argues with saving endangered species. We just feel it needs to be accurately applied, and we can't afford mistakes. So I am wondering if you had any further thoughts or anything you would like to offer in that regard?

Mr. KEYS. Mr. Chairman, Mr. Osborne, certainly on the Platte River, I have a personal involvement there with the governance committee. And I would tell you that before any of the plans or projects are implemented there, we will certainly do an adequate review. We are looking at the review that you have mentioned, and we are actually doing some peer review as we go along. And as I said, certainly before we implement any of those, there will be a thorough review.

On the Endangered Species Act and the rest of the West right now, I think the problem that Mr. Calvert mentioned before about the Rio Grande River or the Rio Grande—I make that mistake quite often because that is a double—whatever. If you look at the water conditions in the Rio Grande, they are indicative of some of the problems we are trying to deal with. The inflow to Elephant Butte Reservoir has been projected at 2 percent of normal, and those are disastrously historic lows that we are trying to deal with. We are trying to make use of the water in the basin. And certainly within the court orders that have been done there, we are walking a thin line in making water available and taking it from those contractors. And we have had excellent cooperation from the city of Albuquerque, from the State of New Mexico, and right now we have a plan that will keep the fish alive and keep the water supply available in the middle of the Rio Grande area there.

I will tell you that is a challenge, and that is not the only place we have a challenge this year. On the Milk River in Montana, we are at again historic lows there. There is some water in Canada that is helping us with the bull trout. That is the endangered species there. And certainly I could go on with other examples. But so far we have been able to find water supplies and make them available, and the question is how much does it cost? And I will tell you it is very expensive, but we are able to do that and still meet our contract requirements.

Mr. OSBORNE. I might just mention one other thing, and it is not just administering flows, because as you know, we now have a new depletions rule in Nebraska, which means a rather arbitrary limit of 3 miles from the river you can't build a new well. If you do, you have to have an offset. You have to shut down one to drill one. Nobody quite knows for sure what the limits of that alluvium are.

So, you know, we are talking about instream flows, but we are also talking about irrigation in general, and there is no question that there is an interaction between surface water and groundwater, but I think we need to have more accurate data before we impose a restriction like we have right now.

Again, I want to reiterate the need for an independent study, and I am glad to hear that you are thinking about and that you are working on it, and we will continue to stay in touch with you.

Mr. KEYS. Mr. Chairman, Mr. Osborne, the one thing I would add to the end there, we are working very closely with the State of Nebraska. And certainly as they see a balance there between development and protection of existing water supplies and water rights, we will work very closely with them in doing that.

Mr. OSBORNE. Thank you. I yield back.

Mr. CALVERT. I would be happy to work with the gentleman to get some authorization language and potentially some appropriations necessary to perform such a study and see if we can't—

Mr. OSBORNE. Thank you, Mr. Chairman, that is the nicest thing I heard today.

Mr. CALVERT. As the staff is listening intently, I know, see if we can get that together. We certainly thank you, as always, for coming here, Commissioner Keys. And, again, thank you for the good job you are doing at the Department, and say hi to all our friends over there, and look forward to seeing you again soon.

Our next panel is Betsy A. Cody, Section Head, Natural Resources and Earth Sciences, specialist in natural resources policy, Congressional Research Service; Thomas F. Donnelly, executive vice president, National Water Resources Association; Robert S. Lynch, attorney at law, Phoenix, Arizona; and Henry J. Vaux, associate vice president, University of California, Division of Agriculture and Natural Resources.

Mr. Vaux, I understand you have to catch a plane soon, so we are going to let you go first. So you are recognized. We have a 5-minute rule. You will see little lights up there, green, yellow and red. Green means that it is fine. Yellow means you have 1 minute; and red, hopefully you are wrapping it up.

Mr. Vaux.

STATEMENT OF HENRY J. VAUX, JR., ASSOCIATE VICE PRESIDENT, UNIVERSITY OF CALIFORNIA, DIVISION OF AGRICULTURE AND NATURAL RESOURCES

Mr. VAUX. Thank you, and thank you for taking me out of turn to deal with my tight flight schedule.

Mr. Chairman, my name is Henry Vaux, and I am professor of resource economics at the University of California, Riverside, and for the past 10 years I have also served as associate vice president for agriculture and natural resources of the University of California system. I am also the immediate past Chair of the Water Science and Technology Board of the National Academy of Sciences.

At the outset I want to thank you for the opportunity to testify here today on H.R. 3561. I also wish to thank you for your leadership efforts to solve the very considerable water problems in California and for your unfailing support of the University of California at Riverside. It is very much appreciated.

This bill, H.R. 3561, is directly responsive to the very serious water problems which the United States faces in the early decades of the 21st century. Population growth, economic growth and the widespread recognition of the need to maintain and enhance aquatic ecosystems will create very significant challenges for the Nation's water managers, and these pressures increase at a time when there are important transitions under way in the water management arena, transitions which may allow us to avail ourselves of significant new technology and significant innovations in water management.

In the last 20 years, Federal water policies, particularly those related to the management and development of water resources, have fallen into disarray. To a large extent, the responsibility for water management and development has been left *de facto* to the States. Even the responsibility for Federally supported monitoring programs has been reduced in recent years, despite the fact that water and water quality data will be essential for characterizing our water problems and devising enlightened strategies for solving them.

For several reasons the fashioning of water management and development strategies needed to solve our water problems are not likely to be particularly effective if left exclusively to the States. I have laid out the arguments that have to do with the capacity of States to finance infrastructure and other programs within the body of my written testimony. I do want to indicate that in no way do I challenge the importance or propriety of State water rights and State primacy in the management of local water resources.

A Twenty-First Century Water Policy Commission of the sort envisioned by H.R. 3561 is an obvious first step in reestablishing comprehensive Federal water policies to help guide us in addressing current and future water problems. The objectives spelled out in section 32 represent an appropriate basis upon which to develop a stronger set of Federal water policies. Strong research and strong monitoring are the prerequisites, but a comprehensive array of policies covering all manner of water and water-related problems are also needed.

It has been almost 30 years since the last comprehensive treatment of national water policy. Some of the recommendations issued by the National Water Commission in 1973 are as timely today as they were in 1973, but others are now outdated. I think you would agree that the circumstances of today are far different from the circumstances of 1973, and the water problems of today are even more challenging and far more complex than they were in 1973.

I was a member of the staff of the National Water Commission which issued its report in 1973, and so I think I know of what I speak. It is time for another commission to make a thorough examination of our current situation and make recommendations based upon science for an integrated set of national water policies. The Twenty-First Century Water Policy Commission as proposed in H.R. 3561 would be an appropriate body to do this.

I have several suggestions about the specifics of the bill. I do believe that a commission composed of outside representatives who are people representing industry and others who use water would likely be more effective than what is proposed in the current draft

of the bill. With all due respect, a commission comprised predominantly of Federal agency heads with all due respect is likely to be consumed with turf battles. And finally, I think you will need more than a year to address all of the objectives that are listed in this bill.

Mr. Chairman, I appreciate the opportunity to appear here this afternoon. Thank you.

Mr. CALVERT. I thank the gentleman.

[The prepared statement of Mr. Vaux follows:]

**Statement of Henry Vaux, Jr., Professor of Resource Economics,
University of California, Riverside**

Mr. Chairman, my name is Henry Vaux, Jr. and I am Professor of Resource Economics at the University of California, Riverside. For the past ten years I have also served as Associate Vice President, Agriculture and Natural Resources, of the University of California System. I am also immediate past chair of the Water Science and Technology Board of the National Research Council. I must emphasize that I testify here on my own behalf and my views should not be interpreted as those of the University of California.

At the outset I want to thank you for the opportunity to testify here today in support of H.R. 3561. This bill is directly responsive to the very serious water problems which the United States faces in the early decades of the 21st century. Population growth, economic growth and the widespread recognition of the need to maintain and enhance aquatic ecosystems will create very significant challenges for the nation's water resource managers. These pressures increase at a time when there are important transitions underway in the water management arena. Dams are proposed for decommission and removal. Scientific research hints at potential changes in the hydrologic cycle and changes in hydrologic variability. While the changes that characterize this transition might seem to make the problems of addressing the new water realities more difficult, they may in fact present many new opportunities in the form of scientific and technological breakthroughs.

The fragmented Federal policies that governed water resources research and management throughout most of the twentieth century will probably be inadequate to foster the development of needed water-based technologies and the development of more comprehensive knowledge of the aquatic environment. The traditional strategy of constructing dams and canals to capture and store water so that it can be used at times and places where it is needed is no longer as attractive as it once was. The most desirable damsites have already been developed. Those that remain are difficult and costly to develop and often quite remote from places of use. The public financing of large civil works for water supply is also far more difficult not only because of the higher costs but because of the competition for public funds which is now far more intense than it was in the heyday of dams and canals. In addition, we now understand that dams can do significant harm to riverine environments and the costs of such damages are themselves quite large.

In the future, new surface water storage and conveyance systems are likely to be only a minor part of the mix of strategies needed to address the challenge of intensifying water scarcity. The management of water demand, whether through pricing, education and/or technology, will have to be a significant component of the response to intensifying water scarcity. Water recycling and reuse, already a major means of augmenting supply in the very arid portions of the country, will have to become more widespread both to meet growing demands for water supply and to ensure that receiving water quality is maintained and enhanced. (two periods) Modern pollution control policies will be needed and those policies should reflect the fact that waste sinks—land, air and water—are interrelated and cannot be managed in isolation. And, there will be a need for development of new water supply technology, including desalinization technology as well as new methods and techniques for managing ground water.

The problems of devising new and innovative means of augmenting water supplies and managing water demands will be made more difficult by the need to manage water resources in ways that provide adequate water for non-consumptive uses. Non-consumptive uses, which are sometimes referred to as instream uses, include environmental and recreational uses, navigation, the generation of hydroelectric power and flood control. Thus, for example, much remains to be done by way of restoring the integrity of aquatic ecosystems so as to preserve and maintain ecosystem services and environmental stability. Flood control and flood management are

continuing challenges as evidenced by the high flows on the middle Mississippi last week. Energy generation and transportation are likely to remain is (an) important water management objectives. This means that ways will need to be found to achieve appropriate allocative balances between water for consumptive use and water for instream or nonconsumptive uses.

There is evidence that existing science is inadequate to address the water problems of the 21st century and better science is going to be required if these problems are to be effectively addressed. Thus, for example, experience with modified flow regimes on the mainstream of the Colorado River, new interest in restoring the historical flows of the Missouri River and a major national commitment to restore the Everglades all reveal the need for substantially more science. In the summer of 2001 diversions were halted in the upper portion of the Klamath River basin of Oregon and California in an effort to protect several endangered species. The decision to halt diversions resulted in significant economic damage to a number of water users. Yet, scientific peer reviews ultimately revealed the scientific information upon which the decision to halt diversions was based to be inadequate. Clearly, better science is needed on which to base the water policies which will be needed to guide in solving these types of problems in the future.

Recently the Water Science and Technology Board of the National Research Council published a water resources research agenda for the twenty-first century. That publication delineates the major scientific research effort that will be needed to develop the knowledge necessary to formulate a set of science based water policies for the United States. The report emphasizes three main themes:

- The challenge of solving the nation's water problems will require a renewed national research commitment.
- Water quality and water quantity need to be thought of in an integrated fashion.
- Relatively more attention needs to be given to innovative ways of organizing our water institutions.
- Environmental issues will remain a very important part of the water resources management agenda.

These and other recommendations form of (a) blueprint of the kind of research needed to underpin an effective national water policy. Although the research agenda is ambitious and will require significant Federal investment it must be addressed if future national water policies are to be based on adequate science. Yet, this is not all that must be done.

In the last twenty years, Federal water policies—particularly those related to the management and development of water resources—have fallen into disarray. To a very large extent, the responsibility for water management and development has been left de facto to the states. Even the Federally supported monitoring programs have been reduced in recent years despite the fact that water and water quality data are essential if water problems are to be accurately characterized and enlightened strategies for solving them are to be formulated. For several reasons, the fashioning of water management and development strategies needed to solve the nation's water problems is not likely to be particularly effective if left exclusively to the states. First, states do not have the financial resources necessary to develop and rehabilitate the needed water infrastructure. Second, state boundaries almost never coincide with watershed boundaries thereby leading to watershed management policies that are either partial or fractionated. Third, frequently there are circumstances in which the states have an incentive to compete with each other in an effort to make themselves attractive to new industry. Often these same incentives lead to a diminution of water quality or to over allocation of scarce water resources. For all of these, reasons, the Federal Government needs to reassert a strong role in the management and development of water policy.

A Twenty-First Century Water Policy Commission of the sort envisioned in H.R. 3561 is an obvious first step in reestablishing strong and comprehensive Federal water policies to guide the nation in addressing its water problems. The objectives spelled out in Section III (2) represent an appropriate basis upon which to develop for a stronger set of Federal water policies. Strong research and monitoring programs are clearly prerequisite but a comprehensive array of policies covering all manner of water and water related problems are also needed. It has been almost thirty years since the last comprehensive treatment of national water policy. Some of the recommendations issued by the National Water Commission in 1973 are as timely today as they were then. Many of the others are now outdated. The circumstances of today are far different than they were in 1973. The water problems of today are even more challenging and complex than they were in 1973. It is time for another Commission to make a thorough examination of our current situation and make recommendations for an integrated set of national water policies. The

Twenty-First Century Water Policy Commission proposed in H.R. 3561 would be an appropriate body to do this.

Mr. Chairman, I appreciate the opportunity to appear here and I hope that your subcommittee will act favorably on H.R. 3561. Thank you.

Mr. CALVERT. Betsy Cody, Section Head, Natural Resources and Earth Sciences, is recognized.

STATEMENT OF BETSY A. CODY, SECTION HEAD, NATURAL RESOURCES AND EARTH SCIENCES AND SPECIALIST IN NATURAL RESOURCES POLICY, CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS

Ms. CODY. Good afternoon. I am a specialist in natural resources policy for the Congressional Research Service, Library of Congress. Mr. Chairman and members of the Subcommittee, thank you for this opportunity to provide background for the Subcommittee as it considers H.R. 3561. I would ask that my full written testimony be included in the record.

Mr. CALVERT. Without objection, so ordered.

Ms. CODY. My purpose today is to provide an overview or context for a discussion of the proposal to establish the Twenty-First Century Water Policy Commission. My testimony covers two areas: First, the evolution of the Federal role in Federal water policy, and second, a summary of the major study commissions established over the last 50 years. Please note that the information I provide today is for background purposes only. CRS takes no position on pending legislation.

The responsibility for development and management of water resources is spread among many Federal, State, local, tribal and private interests. Nearly two centuries of project development as well as environmental and resource management activities have created a very complex web of Federal and State water laws, regulations, and even contractual obligations and economies based on existing infrastructure. Complicating these matters further is the dynamic and complex nature of the resource itself.

The Federal role in water policy has evolved to include a range of water resource and water quality activities, from initial efforts to improve and maintain waterways for navigation to the Federal role in expanding investments in flood control and providing water for irrigation. Over the years new rules were added. For example, water quality regulations were developed as were assistance programs to communities to meet new treatment objectives. These new and sometimes competing rules have generated questions about the efficiency and coordination of Federal water policy activities. These questions then necessarily involve the attention of numerous congressional Committees and Federal agencies. Currently there are more than 12 standing Committees in the House and the Senate that have some jurisdiction over—that claim some jurisdiction over various components of Federal water policy. Similarly several agencies also have responsibilities for implementing the laws that these Committees report.

In response to perceived inefficiencies, potentially conflicting programs, and requirements of Federal water policy, Congress, the executive branch and others have employed commissions to identify

ways to bring order to the Federal role. Since 1950, at least six such commissions have examined the Federal water policy, and there have been numerous others throughout the latter part of the 20th century. Several were established by Congress. Some were made up of non-Federal members appointed by the President. One consisted solely of Federal officials and was set in the White House. Another was solely congressional, consisting of 17 Senators.

The reports of these commissions ranged from policy recommendations and overviews to data-intensive assessments of the Nation's water resources. Each report is summarized in my written testimony beginning on page 11 in the table.

In 1950—the 1950 report of the President's Water Policy Commission identified specific needs for river basin planning and coordination. While the recommendations of this report were widely discussed, tensions over specific project funding and executive branch versus legislative branch priorities, not unlike those of today, stalled implementation of those recommendations. Others on this panel will talk about some of the other commissions during this time.

The stalemate led by—this stalemate between the executive branch and legislative branch led to the creation of a second group, the Senate Select Committee on National Water Resources. Many recommendations of the 1961 Senate select Committee report were then enacted in the Water Resources Planning Act of 1965. The 1965 act created the Water Resources Council. The Council published two assessments on water resources supply and availability, one in 1968 and one in 1978, as well as principles and guidelines that are still used today for project planning and evaluation.

In 1968, the National Water Commission was established to review Federal water policies in the wake of numerous attempts and proposals to develop the Colorado River Basin and even import water supplies from the Columbia River. The Commission issued its final report in 1973, and the report does appear to have contributed to numerous policy changes implemented over the following 15 years.

In 1987, the National Council on Public Works Improvement reported on water supply and infrastructure needs. Finally, the Western Water Policy Review Commission issued a report in 1998 which recommended 10 principles for water management for the 21st century.

In summary, Mr. Chairman, while many experts and some States have called for better coordination of the complex web of Federal water policy activities, no comprehensive change in Federal water resources management has occurred since enactment of the Water Resources Planning Act of 1965. Changes have occurred incrementally, agency by agency, statute by statute. More comprehensive changes were impeded both by the diversity of needs and interests and by the complexities associated with long-term commitments and the infrastructure already in place. New demands on traditional multipurpose water resources agencies like the Corps of Engineers and the Bureau of Reclamation, combined with calls for an increased Federal investment in water treatment and drinking water infrastructure, are again raising the questions

related to the future role of water supply development and how such a goal ought to be coordinated.

Thank you. This concludes my statement, and I would be happy to answer any questions.

Mr. CALVERT. Thank the gentlelady.

[The prepared statement of Ms. Cody follows:]

Statement of Betsy A. Cody, Section Head, Natural Resources and Earth Sciences Section of the Resources, Science, and Industry Division, and Specialist in Natural Resources Policy, Congressional Research Service, Library of Congress

Good afternoon. My name is Betsy Cody. I am a specialist in Natural Resources Policy for the Congressional Research Service, Library of Congress and currently head the Natural Resources and Earth Sciences Section of the Resources, Science, and Industry Division. Thank you for this opportunity to respond to your request for background information on the current and historic Federal roles in water supply development, as well as for information on several national water commissions, committees, and studies undertaken since 1950.

My purpose today is to provide an overview, or context, for a discussion of an effort to study and coordinate all aspects of Federal water policy. My testimony covers two areas: 1) the evolution of Federal project and program authorities for water supply development, touching briefly on Federally supported water and wastewater treatment programs; and 2) major study commissions that have assessed water availability, institutional issues, and to a degree, facilities' needs over the past 50 years.¹ The information provided herein is for background and analytical purposes only as the subcommittee considers H.R. 3561, to establish the Twenty-First Century Water Policy Commission. CRS takes no position on pending legislation and does not make recommendations.

Today, the Federal Government is involved in a full range of water resources and water quality activities, ranging from water resources/supply development, to water quality regulation and species stewardship. However, the responsibility for development and management of the Nation's water resources is spread among many Federal, state, local, tribal, and private interests. Nearly two centuries of project development as well as environmental and resource management activities have created a complex web of Federal and state laws and regulations, contractual obligations, and economies based on existing water resources infrastructure.

Over time, numerous attempts have been made to review and/or coordinate Federal water activities; a few of the more comprehensive efforts are outlined below.² These efforts have included creation of an Executive Branch agency to coordinate and plan for Federal water activities, including activities of several river basin commissions (Water Resources Planning Act of 1965 (P.L. 89-80; 79 Stat. 245)), recent direction to the U.S. Geological Survey to report on efforts needed to undertake periodic assessments of water availability and use (House report language accompanying H.R. 2217; H. Rpt. 107-103, Department of the Interior and Related Agencies Appropriations Bill, 2002, June 19, 2001, p. 64) and now H.R. 3561, the subject of this hearing, which would establish the Twenty-First Century Water Policy Commission.

EVOLUTION OF FEDERAL PROJECT AND PROGRAM AUTHORITIES³

The current Federal role in water policy has evolved over nearly two centuries to include significant Federal investment in water resources infrastructure, creation of water quality standards and regulations, and laws affecting both the use and stewardship of aquatic resources. The first Federal involvement in water resources development was for improving and maintaining waterways for navigational purposes.

¹More recent studies addressing drinking water and water and wastewater treatment facilities needs are not included in this analysis.

²One major commission not included in this analysis is the National Commission on Water Quality, which was established by §315 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500). The Commission was charged with making a full and complete investigation of all aspects of achieving or not achieving the effluent limitation goals established for 1983 and identifying any mid-course corrections that may need to be undertaken. The Commission's final report laid the groundwork for the Federal Water Pollution Control Act Amendments of 1977.

³For more information on these authorities, see CRS Report RL30478, Federally Supported Water Supply and Wastewater Treatment Programs, updated February 16, 2001.

Navigational needs soon gave way to demands for Federal investment in controlling floods and for providing water for irrigation. Since the turn of the 20th Century, the Federal Government has built thousands of individual water resource projects, primarily dams, dikes, and diversion projects whose principal purposes were for irrigation and flood control. One subset of these Federal water resource activities is water supply development.

While the Federal Government has played a significant role in developing water resources through the construction of reservoirs for flood control and irrigation, historically it played a relatively minor role in funding construction of water supply and treatment facilities for municipal and industrial (M&I) uses. Instead, several programs exist to assist individually designated or eligible communities with development of water supply and treatment projects and it appears Congress is being asked more frequently to fund such programs. Historically, municipal and industrial (M&I) uses were incidental to the larger project purposes of flood control and water supply for irrigation. Consequently, most of the Nation's public municipal water systems have been built by local communities under prevailing state water laws. Consideration of other purposes, such as recreation and fish and wildlife, were later added statutorily to the purposes for which Federal water resource projects were constructed, operated, and managed (e.g., Fish and Wildlife Coordination Act (16 USC 4601-12)).⁴

Water Resource Projects of the Bureau of Reclamation and U.S. Army Corps of Engineers

In pursuit of developing water resources to provide water for irrigation and to control flooding, Congress authorized Federal construction of numerous water resource projects throughout the middle to late 1900s. The largest Federal water projects were undertaken by the Department of the Interior's Bureau of Reclamation (Bureau) and the Department of Defense's civil works agency, the U.S. Army Corps of Engineers (Corps). The Reclamation Act of 1902, as amended, and numerous project-specific acts authorized the construction of storage and irrigation works in the West. Even though Congress subsequently authorized other uses of project water, including M&I use, the historical emphasis of the Bureau's operations was to provide water for irrigation in the arid and semi-arid areas of the western states. Similarly, the Corps constructed large reservoirs primarily for flood control under numerous flood control acts throughout the last century, but was authorized in 1958 to allocate water for M&I purposes if reimbursed by local sponsors (Water Supply Act of 1958, 72 Stat. 320; 43 USC §390b). In this Act, Congress emphasized the primacy of non-Federal interests in water supply development.⁵ Other, smaller flood control and water supply projects, e.g., those built under the Small Watershed Program (P.L. 83-566, as amended; 16 USC 1001-1006), have been undertaken by the Department of Agriculture's Natural Resources Conservation Service (formerly Soil Conservation Service).

Over the past 20 years, the Bureau has been authorized to assist or construct several rural municipal water supply projects (often in lieu of previously authorized irrigation projects that were not built), as well as numerous small water recycling and reuse projects (Reclamation Projects Authorization and Adjustment Act of 1992 (Title 16 of P.L. 101-575), as amended; 43 USC 390h et. seq.).⁶ Since 1992, the Corps has been authorized to assist with various "environmental infrastructure" projects ranging from wastewater treatment, combined sewer overflow, water supply, storage, treatment, and related facilities as part of successive Water Resources Development Acts in 1992 (§219 and §313), 1996, 1999, and 2000. While there have

⁴ More recently, Congress has authorized particular broadscale ecosystem restoration projects in connection with major Federal water resource projects that previously altered natural water flows (e.g., Everglades legislation in the 106th Congress (Title 6 of P.L. 106-541), California Bay-Delta legislation in the 104th Congress (Division E of P.L. 104-208); re-authorization of funding for the latter program is being debated in the 107th Congress (see H.R. 3208 and S. 1768). Efforts to deal with water quality and resource protection issues in San Francisco Bay date back to the 1960s. Similarly, efforts to improve resource management of the Chesapeake Bay date back several decades.

⁵ "It is declared to be the policy of the Congress to recognize the primary responsibilities of the States and local interests in developing water supplies for domestic, municipal, industrial, and other purposes and that the Federal Government should participate and cooperate with States and local interests in developing such water supplies in connection with ... Federal navigation, flood control, irrigation, or multiple purpose projects." (43 USC §390(b))

⁶ A similar pilot program for "alternative water source" projects in non-reclamation states was authorized in 2000 (Title VI of P.L. 106-457; 114 Stat. 1975). Under this act, the Administrator of the Environmental Protection Agency is authorized to establish a pilot program to make grants for water conservation, reclamation, and re-use projects to meet critical water supply needs.

been appropriations for the Bureau's water re-use (Title 16) projects and certain Corps' environmental infrastructure projects, funding has not kept pace with project authorizations. Some have argued that the future implementation of the rural water supply, environmental infrastructure (4219, etc.), and water re-use (Title 16) projects has the potential to create an altogether new (and perhaps competing) mission for the Corps and the Bureau in contrast to their traditional multi-purpose water resources projects. Further, there is concern that these more recent authorizations may duplicate efforts under programs administered by other Federal agencies such as the Environmental Protection Agency (EPA). Additionally, recent efforts to address ecosystem restoration needs and water quality issues in both Florida and California have included proposals for significant water supply features. These multi-billion dollar efforts have raised concerns about the proper Federal role in providing water and water resource infrastructure to communities, about different Federal/local cost-share policies, and about equity among the many water resource problems facing the country, especially in times of drought and competition for budgetary resources.⁷

General Water Supply Development and Wastewater Treatment

To date, M&I water supply development and wastewater treatment have principally been the domain of local interests and entities, with the Federal Government providing significant financial and technical assistance through various Federal programs, including grants and loans. Except for the water resource projects noted above, these programs are found within the Department of Agriculture (Rural Utilities Service, Water and Waste Disposal Program⁸), the Department of Commerce (Economic Development Administration, Public Works and Development Facilities Program⁹), Department of Housing and Urban Development (Community Development Block Grants¹⁰), and the Environmental Protection Agency (Clean Water State Revolving Loan Fund (SRF) Program¹¹ and Drinking Water SRF Program¹²). (See attached CRS Report RL30478, Federally Supported Water Supply and Wastewater Treatment Programs, updated February 1, 2002.)

The practical difference between the individual project authorizations of the Bureau and the Corps, and the programs of these other agencies is that individual project authorizations offer no predictable assistance, or guarantee of funding after a project is authorized, because funding must be approved via the congressional appropriations process. The programs, on the other hand, have set program criteria, are authorized for multiple years, are generally funded from year to year, and provide a process under which project sponsors compete for funding. Whether recent authorizations for rural water supply and re-use projects, water supply/ecosystem restoration projects, and environmental infrastructure projects signal a shift in congressional policy to a more direct or larger Federal involvement in water supply development is not yet clear.

Looking Ahead

Decisions about the future of U.S. water resources policy are inextricably linked to the past. Nearly two centuries of water resources project development has created a complex web of Federal and state laws and regulations, contractual obligations, and economies based on existing water resources infrastructure. Complicating matters further is the complex and dynamic nature of the resource itself. The basic hydrologic cycle, floods, droughts, groundwater, and the chemical and biophysical nature of water are in a constant state of flux. Added to the resource complexities are the dimensions of human use. Water is abundant in some areas and not others. Making water available through irrigation was a key part of national policies to settle the West. In many areas, essentially all water has been allocated—perhaps over-allocated in dry years.

While the implications of water use are most critically apparent at the local level, water flows across political boundaries. In the West, especially, many headwaters rise on Federal lands, and numerous Indian Tribes hold treaty rights to many to waters and related resources. With this complexity in the nature of water resources, over time, myriad laws have been enacted to allocate and regulate water use,

⁷ Comments of Senators Frank Murkowski, Jon Kyl, and others during mark-up of S. 1768, Senate Energy and Natural Resources Committee, May 16, 2002.

⁸ 7 USC 1926, with regulations at 7 CFR 1780.

⁹ 42 USC 3131, 3132, 3135, 3137; 42 USC 3211, with regulations at 13 CFR 302, 305, 316, and 317.

¹⁰ 42 USC 5301et seq., with regulations at 24 CFR 570.

¹¹ 33 USC 1381–1387, with regulations at 40 CFR 35.3100.

¹² 42 USC 300j–12, with regulations at 40 CFR 35.3500.

protect its quality, develop its energy potential, contain its destructive powers, and maintain or enhance its biological integrity.

The many aspects of water resources supply and development and of the programs and processes involved engage the attention of numerous congressional committees and Federal agencies. For Congress, this has resulted in a complex set of diverse and sometimes overlapping committee jurisdictions dealing with various aspects of water policy. For example, the issues discussed in this overview have largely been handled by four authorizing committees: the House Resources Committee, House Transportation and Infrastructure Committee, the Senate Energy and Natural Resources Committee, and the Senate Environment and Public Works Committee; however, some resource management issues (fisheries, wildlife, wetlands, and watershed management in particular) involve other, committees and subcommittees. Currently, at least 12 standing committees in the House and Senate have some jurisdiction over various components of Federal water policy. Of the House Resources Committee alone, four of the five subcommittees have specific references to some aspect of water resources management in their jurisdictional descriptions.¹³

Further, several different executive branch departments and agencies are responsible for implementing various laws under the jurisdiction of these committees. These arrangements can complicate management of river systems and resources comprising large watershed areas such as the Missouri and Mississippi River Basins, Columbia and Colorado River Basins, and the California Bay-Delta, and even smaller systems, especially where anadromous fisheries are involved. Similarly, multi-jurisdictional management of water and resources found in the Great Lakes basin, the Florida Everglades, and the Chesapeake Bay, are challenging existing institutional structures to deal with various aspects of water policy. Not only do various departments and agencies have different and sometimes competing responsibilities, they also face the difficult task of coordinating their actions and decisions.

While many experts and some states have called for better coordination of Federal water policy activities, Congress has not enacted any comprehensive change in Federal water resources management since the Water Resources Planning Act in 1965 (P.L. 89-80; 42 USC 1962 et seq.)—and this predates the substantial role of the Environmental Protection Agency in water quality protection since the early 1970s, as well as passage of the National Environmental Policy Act (NEPA) in 1969 and the Federal Endangered Species Act (ESA) in 1973. Instead, Congress has enacted numerous incremental changes, agency by agency, statute by statute. Where coordination of Federal activity has occurred, it has been driven largely by pending crises, such as potential threatened or endangered species listings, droughts or floods, and by local or regional initiatives. Consequently, criticism of the fractured nature of water policy at the Federal level has been a recurrent theme for decades. Yet, any attempt to untangle the complexities of current national water policy involves many constituencies with many differing interests. For example, states historically have been wary of Federal involvement in intrastate water management and allocation issues and thus, even in cases where the Federal Government is directly involved in building water supply facilities, Congress has recognized that states generally have primacy in intrastate water allocation.¹⁴

As one can see, the Federal role in water policy at the national level is both complex and dynamic. Efforts to pull together the many divergent problems and issues associated with water management have on several occasions included the use of commissions to identify ways to bring order or cohesion to the many and varied aspects of Federal water policy. Several such efforts occurring in the latter part of the 20th Century are discussed below.

MAJOR WATER RESOURCES STUDIES AND COMMISSIONS

Several major water resources studies and reports were issued by various commissions, committees, and councils in the last half of the 20th Century. (See summary information in the Appendix to this statement.) Efforts to understand and address

¹³ Rules for the Committee on Resources. U.S. House of Representatives, 107th Congress, Rule 6. Establishment of Subcommittees; Full Committee Jurisdiction; Bill Referrals. Adopted February 14, 2001. The full text of the Resources Committee's rules for the 107th Congress can be found at Congressional Record (daily edition), v. 147, February 26, 2001, pp. H402-H405.

¹⁴ This is not generally a question of what powers the Federal Government has and could exercise under the Constitution. Congress has often required that the United States defer to or comply with state law in the construction and operation of Federal facilities pertaining to allocation, control, or distribution of water (e.g., Sec. 8 of the Reclamation Act of 1902, 32 Stat. 390; 43 USC 372, 383). Other laws recognizing state primacy and their effects have been the subject of much judicial interpretation.

the growing Federal involvement in water resources development largely began in the mid-1930s with the Mississippi Valley Committee (1934) and the Water Resources Committee of President Franklin Roosevelt's Natural Resources Commission (1935-1937). Creation of the Tennessee Valley Authority and attempts to create other regional authorities for river basins throughout the country were debated and studied for decades. These efforts culminated with several major policy and assessment studies in the later part of the century.¹⁵

In December 1950, President Truman issued A Water Policy for the American People, which concluded that municipal supply development should "continue to be primarily a local responsibility," but advocated river basin planning and coordination to streamline development and financing needs,¹⁶ including the tightening of economic standards for evaluating proposed projects and increased cost-sharing by local sponsors. In part because many recommendations for planning and coordination in Truman's 1950 report had not been implemented, because of growing tensions between the executive and legislative branches on water policy,¹⁷ and because of the diversity of jurisdictions over water issues in Congress, the U.S. Senate convened a Senate Select Committee on National Water Resources in 1959.

Senate Select Committee on National Water Resources

Members of the final Senate Select Committee on National Water Resources were appointed by the chairmen of the four Senate standing committees from which the membership was drawn. Four additional members were to be appointed by the Vice President (two Senators each from the minority and majority parties), for a final total of 17 Senators.¹⁸ The final report of the committee was issued in January 1961, along with 32 studies and records from 23 hearings. The results of the report were debated in several successive Congresses, including many hearings before the predecessor to this Committee, the House Interior and Insular Affairs Committee. Noted in the Committee activity report for the 86th Congress was the fact that the water subcommittee had spent far more time on legislation not enacted than that which had become law that Congress. Many of the select committee's report recommendations became the foundation of the Water Resources Planning Act of 1965.

Water Resources Council

The Water Resources Planning Act of 1965 (P.L. 89-80; 79 Stat. 244 (42 USC 1962, et seq.)) established the Water Resources Council (WRC), a Federal-level water resources coordinating and planning body situated in the Executive Office of the President. Members of the Council included the Secretaries of the Interior; Agriculture; Army; and Health, Education and Welfare; and the chairman of the Federal Power Commission (later the Secretary of Energy). Secretary of the Interior Stewart Udall chaired the first Council. In 1975 (in P.L. 94-112), Congress expanded the

¹⁵Early efforts at coordinating Federal activities in water policy included the Federal Inter-agency River Basin Committee (also known as "firebrick") and recommendations of the first Hoover Commission (1947 and 1948). In 1968, in its first assessment of the Nation's water supply, the Water Resources Council noted that "during the past 60 years, over 20 commissions or committees have looked into national water policies and problems." (The Nation's Water Resources: The First National Assessment of the Water Resources Council. (Washington, DC: U.S. Govt. Printing Office, 1968), p. 2-2.)

¹⁶The recommendations for comprehensive planning had long been studied. As early as 1908, the Inland Waterways Commission and the National Conservation Committee of President Theodore Roosevelt recommended study of comprehensive national water resources planning and development. (U.S. Senate. Committee on Interior and Insular Affairs, History of the Implementation of the Recommendations of the Senate Select Committee on National Water Resources. 90th Congress, 2d Session. Senate Committee Print prepared at the request of Henry M. Jackson, Chairman. (Washington, DC: U.S. Govt. Printing Office, 1969), p. 15.)

¹⁷Tensions between the executive branch and the legislative branch over fiscal constraints in water resources projects and planning, and state roles vis-a-vis Federal agencies roles were apparent throughout the 1950s, and beyond. Omnibus Rivers and Harbors bills (a precursor to today's Water Resources Development Act (WRDA) bills) were vetoed by President Eisenhower in 1956 and in 1958, as were the Public Works Appropriations Act for Fiscal Year 1960 and proposed amendments to the Federal Water Pollution Control Act in 1960. As noted in the 1969 History of the Implementation of the Recommendations of the Senate Select Committee on National Water Resources, "[n]ot the least of the significant reasons for the existence of a hiatus in the field of water resources policy was the division of political power between the Republican Party which controlled the executive branch from 1953 to 1961, and the Democratic Party which controlled both Houses of Congress from January 1955 on." (See *Infra* note 14, p. 7.)

¹⁸Senators Robert S. Kerr, Oklahoma (Chairman); Thomas H. Kuchel, California; Dennis Chavez, New Mexico; Allen J. Ellender, Louisiana; Warren G. Magnuson, Washington; Clinton P. Anderson, New Mexico; Henry M. Jackson, Washington; Claire Engle, California; Philip A. Hart, Michigan; Gale W. McGee, Wyoming; Frank E. Moss, Utah; James E. Murray, Montana; Milton R. Young, North Dakota; Andrew F. Schoeppel, Kansas; Francis Case, South Dakota; Thomas E. Martin, Iowa; and Hugh Scott, Pennsylvania. *Infra* note 14, p. 8.

WRC to include the Secretaries of Commerce, Housing and Urban Development, Transportation,¹⁹ and the Administrator of the Environmental Protection Agency (EPA). Reportedly, these secretaries acted as associate members, with the Director of the Bureau of Budget (now Office of Management and Budget) and the Attorney General participating as observers.²⁰ The 1965 Act also created numerous River Basin Commissions which were charged with planning for water resources development on a watershed scale. The Council was specifically tasked with: 1) maintaining and preparing a biennial assessment of water supply and demand; 2) devising new principles, standards, and procedures for project evaluation; 3) establishing and maintaining liaison with River Basin Commissions established under the Act; 4) administering planning grants to states; and 5) effectuating interagency policy coordination in part by encouraging and reviewing river basin plans (§102(b)). The authorization for the WRC still exists (42 USC 1962a); however, the institution has not been funded since 1983.

The first WRC national water assessment was transmitted to Congress by President Lyndon B. Johnson on November 12, 1968. Its major emphasis was to provide “initial assessments of the adequacy of the Nation’s water supply based on readily available data and limited analyses.”²¹ The report used the base year of 1965 for a 50-year time horizon for analyzing emerging problems in water resources development. Its findings necessarily reflected the data available at the time. The second WRC national water assessment was issued December 1978.²² Its major findings reflected the first nationally consistent water use and supply projections for geographical regions, with the data indicating a need for better management to balance water quantity and quality. While the national assessments primarily addressed water availability, use, and trends and were rather data intensive, an intervening effort by the National Water Commission focused on water policy and resulted in 62 additional water policy and technical studies.²³ Perhaps the most lasting effect of the WRC activities was the publication and subsequent revision of principles and standards, or principles and guidelines (P&Gs) for the evaluation of water resource projects, which are still used by Federal water resource agencies for project planning and evaluation.

National Water Commission

The National Water Commission (NWC) was established by P.L. 90–515 (82 Stat. 868) on September 26, 1968 (S. 20, 90th Congress). The NWC was a seven-man commission appointed by the President; its membership excluded officers or employees of the United States Government. The genesis of the NWC lay in deliberations over the passage of the Central Arizona Project and competing proposals for extensive development of the Colorado River Basin, including potential importation of water from the Columbia River Basin.²⁴ The rationale for the NWC was to give a national perspective to the many serious long-range water problems brewing in many parts of the country. The 1973 report of the NWC included numerous conclusions and recommendations ranging from tightening Federal (both executive and legislative branch) evaluation and cost-share procedures and policies for water resource projects (including navigation) to substantial revision of the Nation’s water pollution control policy. With respect to future water projects, the report noted that water use is inherently “responsive to many variables in policy and technology as well as to rates of growth in the population and the economy which cannot be forecast with an assurance.”²⁵ Regarding M&I supplies, the NWC recommended that a national policy be developed and enacted into law to clearly delineate the Federal Government’s role in the provision of water for M&I uses and that such responsibility should remain with non-Federal public and private entities. While the report was

¹⁹ One source (see *Infra* 20, p. 399) notes the Secretary of Transportation became a statutory member of the Council in 1967 for “matters pertaining to navigation features of water resource projects;” however, U.S. Code notes state the Secretary of Transportation was added in 1975 (42 USC 1962a, amendments of P.L. 94–112).

²⁰ National Water Commission. *Water Policies for the Future*. Final report to the President and to the Congress of the United States. (Washington DC, U.S. Govt. Printing Office: 1973), p. 399.

²¹ Water Resources Council. *The Nation’s Water Resources, The First National Assessment of the Water Resources Council*. (Washington DC, U.S. Govt. Printing Office: 1968), p. 2–1. (Emphasis added.)

²² Water Resources Council. *The Nation’s Water Resources, 1975–2000, The Second National Water Assessment* by the U.S. Water Resources Council. (Washington, DC, U.S. Govt. Printing Office: 1978.)

²³ *Supra* note 20, p. 579.

²⁴ *Ibid.*, p. ix. See also, Helen Ingram, *Water Politics, Continuity and Change*. (Albuquerque, University of New Mexico Press: 1990), p. 60.

²⁵ *Ibid.* p. 17.

issued during the end of the Nixon Administration and appeared lost among other national priorities of the time, it appears that many of the reports' recommendations were eventually adopted via changes in Federal water pollution laws and regulations and laid the foundation for on-going changes in water resource project evaluation criteria, cost-share formulas, and pricing policies implemented during the 1980s.

National Council on Public Works Improvement

In 1988, the National Council on Public Works Improvement issued a report on America's public works.²⁶ The Council was established to assess the state of the country's infrastructure. The report was preceded by several sector-specific reports including reports on water supply, wastewater, and water resource issues, all published in May of 1987. The reports noted the growing state and local responsibility for a variety of water resource and water supply infrastructure and concluded in part that there was not an "infrastructure gap" requiring a Federal subsidy. However, the reports did identify an increased need for technical assistance and education, especially for small water systems and rural areas. While infrastructure-funding gaps have been identified,²⁷ it has generally remained the Federal policy that supplying water to individual communities is largely a local responsibility, supported by Federal funding via grants and loans. These funds have largely been provided to assist in meeting treatment needs, consistent with national public health and environmental standards, not for meeting supply or resource needs.

Western Water Policy Advisory Review Commission

Congressional debate over western water policy during drought years of the early 1990s led to creation of the Western Water Policy Review Advisory Commission. Authorized in 1992 by title 30 of P.L. 102-575, the Commission completed its review of western water policy issues in 1998. The report recommended a new governance structure for watersheds and river basins as well as several other reforms of existing Federal water policies and statutes. It specifically listed 10 "Principles of Water Management for the 21st Century." These ranged from promoting "sustainable use" of water to promoting social equity and employing participatory decision-making. The report's conclusions and recommendations were very controversial and criticized by several ex-officio (congressional) members of the Commission, including the then-chairmen of the Senate Appropriations and Senate Energy and Natural Resources Committees, and the then-chairman of the House Resources Committee.

Other Efforts

Many other studies, white papers, reports, and books have been written identifying problems and policy inconsistencies at the Federal level; however, there has been no systematic review of nation-wide Federal water policy since the 1973 NWC report. Similarly, there has been no formal water assessment of the Nation's water resources since the 1978 WRC national water assessment, although the United States Geological Survey (USGS) is preparing a report describing the scope and magnitude of efforts needed to provide periodic assessments of the status and trends in the availability and use of freshwater resources. In this same vein, Title IV of S. 1961, the Water Investment Act of 2002, would direct the Secretary of the Interior, acting through the USGS, to periodically assess the state of water resources in the United States. In contrast, H.R. 3561 would establish a Twenty-First Century Water Policy Commission to study all aspects of water management and develop recommendations for a comprehensive national water policy.

CONCLUSION

Two centuries of project development and environmental and resource management activities have created a complex web of Federal and state laws and regulations, contractual obligations, and economies based on existing water resources infrastructure. While many experts and some states have called for better coordination of Federal water policy activities, no comprehensive change in Federal water resources management has occurred since enactment of the Water Resources Planning Act in 1965 (P.L. 89-80, 42 USC 1962 et seq.) Instead, changes have occurred

²⁶ National Council on Public Works Improvement. *Fragile Foundations: A Report on America's Public Works*. Final Report to the President and the Congress. (Washington DC, U.S. Govt. Printing Office: 1988). 226 p.

²⁷ The national debate about Federal policy in these areas has been augmented for some time by several reports and recommendations of numerous private sector advocates and organizations seeking changes in policy, in the roles of government and others in implementing Federal policy, and in Federal investment in water infrastructure.

incrementally, agency by agency, statute by statute. Where coordination of Federal activity has occurred, it has been driven largely by pending crises, such as potential threatened or endangered species listings, droughts and floods, and by local or regional initiatives. New water supply, treatment, and re-use activities of traditional multi-purpose water resource agencies such as the Bureau and the Corps, combined with calls for an increased Federal investment in wastewater treatment and drinking water infrastructure, and widespread drought in many areas of the country, are again raising questions related to the future Federal role in water supply development and management and how such a role ought to be coordinated.

[Attachments to Ms. Cody's statement follow:]

CRS-11

APPENDIX

Major Water Resources Study Commissions, Councils, and Assessments (1950-2000)²⁹

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
President's Water Resources Policy Commission (7 presidential appointees by President Truman)	1950 – Under Executive Order 10095 (Jan. 1950).	<i>A Water Policy for the American People</i> (Dec. 1950) v. 1: General report v. 2: Ten rivers in America's future. v. 3: Water resources law	"Municipal supply should continue to be primarily a local responsibility. ... The growing needs ... should ... however be considered in connection with the planning of all comprehensive basin programs ... [and be] a fully reimbursable service." (p. 15) Provided the conceptual foundation for the studies and report of the Senate Select Committee, which followed in 1961.	"The necessity of planning for a river basin as a whole instead of having a patch work of plans by separate agencies for separate purposes ..." (p. 9) – plus procedures to determine investment benefits; for a repayment system; for financing basin-level programs; for improved planning information; and watershed management approaches.

²⁹ This analysis does not include the National Commission on Water Quality, which was established by §315 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500). The Commission was charged with making a full and complete investigation of all aspects of achieving or not achieving the effluent limitation goals established for 1983 and identifying any mid-course corrections that may need to be undertaken. A staff report was published in April 1976, which laid the groundwork for the Federal Water Pollution Control Act Amendments of 1977.

CRS-12

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
Senate Select Committee on National Water Resources	1959-1961 (S. Res. 48, 86 th Congress)	<i>Final report of the Select Committee on National Water Resources.</i> S. Rept. 29, 87 th Congress, 1 st Sess., January 30, 1961. 147 p. – Plus 32 Studies and 23 Hearings.	“Need for new capital investments by 1980 of \$12 billion for water storage facilities...”	(1) Development of river basin plans (2) Funding grants to States (3) Coordinated federal applied research on water use, efficiency, conservation, as well as project evaluations (4) Periodic assessments of water supply-demand relationships (5) Flood plain regulation; water shortage studies; future needs study; and public hearings. Recommendations were largely included in the Water Resources Planning Act of 1965, which established the WRC and authorized several river basin commissions. [See Water Resources Council, below]

CRS-13

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
Water Resources Council (established within the Executive office of the President)	1965-1983. Established by Title I of the Water Resources Planning Act of 1965 (P.L. 89-80; 42 USC 1962a) (First assessment issued in 1968)	<i>The Nation's Water Resources: the First National Assessment of the Water Resources Council</i> (Parts 1-7 transmitted to Congress by President Johnson on Nov. 12, 1968 under then extant authority of Title I of P.L. 89-80.)	1968 Assessment “able to only partially catalogue ... measures of adequacy because of limited data and analytical procedures ...” [See Second (1975) Assessment, below] Also noted “[w]ater supply problems are often local, sometimes regional, but seldom national in scope ... [m]any problems may be overlooked when a particular level of geographic detail and time duration is chosen.” (p. 2-3.)	The assessment used existing information on water supply using a base year of 1965. The initial WRC recommendations presumed that comprehensive studies, basin planning, research, and state assistance programs would provide future water policy direction. Also noted that the assessment would survey a 50-year time horizon for evaluating emerging water problems rather than becoming involved in annual project appropriations and authorizations. (p. 2-1.)

CRS-14

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
Water Resources Council (cont.)	Second assessment issued in 1978.	<i>The Nation's Water Resources 1975-2000: The Second National Water Assessment by the U.S. Water Resources Council</i> (4 volumes: v. 1: Summary; v. 2: Water Quality; v. 3: Analytical Data; v. 4: Regional Reports) December 1978 (under authority of P.L. 89-80).	"Without ... careful management ... pressures from our technological society will continue to deplete and degrade the [now] ample supply [in] regional or local shortages ... at times caused by poor quality ... constraints." (p. 2). Report notes "considerable change" from the 1968 assessment – population growth had not occurred at the rate anticipated, nor had projections for future water requirements. Also, "greater awareness of environmental values, water quality, groundwater overdraft, limitations of available water supplies, and energy concerns are having a dramatic effect on water resources management." (p. 8).	Presents "first time nationally consistent current and projected water use and supply information by region and sub-region for the entire United States."

CRS-15

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
National Water Commission (seven non-federal members – presidential appointments)	1968-1973 (under authority in P.L. 90-515).	<i>Water Policies for the Future: Final Report to the President and to the Congress</i> (1973, 579 pp.) Plus 62 additional legal policy and technical studies.	"Need for a comprehensive restatement of policy to govern the role of the federal agencies in meeting the Nation's need for municipal and industrial water supplies" ... "needs have not been adequately considered in ... studies ... [and] inequity ... govern[s] ... grants and low-cost loans" (pp. 166-169)	The most comprehensive water study conducted, integrating policy recommendations on quantity, quality, environmental, economic, and institutional issues. Note: this study had a policy focus rather than the assessment of trends and use of the WRC reports.

CRS-16

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
National Council on Public Works Improvement (five appointed private sector members)	1984-1988 Congressionally-created council under Public Law 98-501 to report to the President and Congress on the "State of the Nation's infrastructure."	Final report <i>Fragile Foundations: A Report on America's Public Works</i> (1988, 226 p.) – Interim and background studies on water supply, water resources, and wastewater management facilities were published in May, 1987. (Other studies reviewed airports and airways; highways, streets, roads and bridges; mass transit; intermodal transportation; hazardous waste management; and solid waste.)	Did <u>not</u> find a national water supply "infrastructure gap" of a magnitude that would require a substantial federal subsidy. Did find a national problem that "the majority of small water systems are poorly managed ... lack ... technical training, ... inappropriate rate structures, ... lack of access to capital, and ... no economies of scale."	Recommended: 1) Full-cost pricing 2) Expanded regional allocation/ [basin] management 3) Expanded research to aid small systems 4) Trade association technical assistance for rural (drinking water systems) 5) Expanded State, local and Federal (EPA) education/ public outreach re: drinking water.

CRS-17

NAME	YEAR(s)	REPORT(s)	MAJOR FINDING RE: SUPPLY/ AVAILABILITY	OVERALL RECOMMENDATION S/ RESULTS
Western Water Policy Review Advisory Commission	1992 — Title 30 of P.L. 102-575 directed the President to undertake a comprehensive review of federal activities in 19 western states and report to Congress with findings and recommendations.	<i>Water in the West: The Challenge for the Next Century</i> — reported to Congress by the Western Water Policy Review Advisory Commission in June 1998. Publication of the report was opposed by several key <i>ex-officio</i> (congressional) commission members.	Majority finding/ conclusion was that rapid population increases in the West are stressing limited supplies of water. The report listed 10 "Principles of Water Management for the 21 st Century." These ranged from promoting "sustainable use" of water to promoting social equity and employing participatory decision-making.	Recommended a new "vested" governance structure for watersheds and river basins; increased federal role in resolving tribal water rights/ water needs; that federal agencies develop and implement comprehensive plans for aquatic ecosystem restoration and increase coordination of activities; integrate land water activities via reforms in the Clean Water Act and development of standards to protect the physical and biological aspects of instream water quality; actively "manage" water supplies as opposed to "develop" new supplies; manage development in flood plains; maintain critical water infrastructure; protect "productive" agricultural communities; and coordinate federal water policy.

Mr. CALVERT. Next, Thomas Donnelly, executive vice president, National Water Resources Association. You are recognized.

**STATEMENT OF THOMAS F. DONNELLY, EXECUTIVE VICE
PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION**

Mr. DONNELLY. Thank you, Mr. Chairman.

Mr. Chairman and members of the Committee, my name is Tom Donnelly, and I am the executive vice president of the National Water Resources Association. On behalf of the membership of the association, it is my privilege to present testimony on H.R. 3561.

My first reaction and, I suspect, the vast majority of our members' first reaction upon learning of the introduction of H.R. 3561 was, please, not another water commission. We have been down this road many times before. In fact, since 1900, over 20 national commissions or similar groups have been authorized by Congress or the President to study water resources. I briefly described the findings of a handful of the more recent efforts in my written testimony.

Characteristics of both the National Water Commission of 1950, the Second Hoover Commission's Task Force on Water Resources and Power, and the National Water Commission included membership composed of nationally recognized water resource professionals; and, two, conclusions calling for greater local authority and financial participation, less Federal involvement, and projects and programs which are based on sound cost-benefit analysis.

All of the aforementioned reports and studies advanced the public debate on water resources management and development and presented valuable recommendations. Unfortunately, very few have ever been read and over the years serve only to gather more dust. That brings me to the most recent such report, which is atypical of the previously mentioned commission studies that neither advanced the public debate nor presented valuable recommendations. In fact, it failed to comply with its congressional mandate.

I fear that in this era of controversial and contentious issues related to water allocation and future development, the Western Water Policy Review Advisory Commission would only serve as a prototype for the commission proposed in H.R. 3561. Rather than follow its congressional directive, the Western Water Policy Review Advisory Commission apparently developed its own agenda. This agenda focused not upon successful water resources development, but rather ecosystem protection; not upon a critique of the effectiveness of existing Federal agencies and programs, but rather the creation of yet a new bureaucratic government structure with a basin commission at its head; not upon means to meet ever-increasing consumptive water demands at the local level, but rather social and economic decisionmaking which may leave demands unfulfilled. In short, the Commission failed to produce a useful work product.

The search for a national water resources policy is akin to searching for the mythical El Dorado. Hydrologically we are not a homogenous Nation; therefore, it is unlikely that comprehensive national policy is possible or desirable. The Clean Water Act is arguably the most successful environmental statute ever enacted, yet some of its one-size-fits-all water quality regulations promulgated under the act are nonsensical when applied to ephemeral streams and rivers in the western United States. There are other examples

too numerous to detail here of the Federal Government's cookie-cutter approach to water policy.

The membership of the National Water Resources Association cannot support H.R. 3561 as written, and it is unlikely that we would support the idea of yet another water commission in any form. We see little likelihood that the ultimate recommendations would add anything new to the body of knowledge on water resources management and development or national policy. Having said that, let me say that having heard Mr. Linder today and the flexibility that he has expressed in formulating the Commission, we would take another look at that if the Commission was well-focused, was made up of water experts—recognized water experts nationally, that I envision we could support such a Commission.

Mr. CALVERT. I thank the gentleman.

[The prepared statement of Mr. Donnelly follows:]

**Statement of Thomas F. Donnelly, Executive Vice President,
National Water Resources Association**

Mr. Chairman, members of the Committee, my name is Thomas F. Donnelly and I am the Executive Vice President of the National Water Resources Association. On behalf of the membership of the Association, it is my privilege to present testimony on H.R. 3561, a bill to establish the Twenty-First Century Water Policy Commission.

The National Water Resources Association (NWRA) is a nonprofit federation of associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource, WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

My first reaction, and I suspect a majority of the members of the NWRA, upon learning of the introduction of H.R. 3561, was; please, not another water policy commission. We have been down this road before with mixed results.

Since 1900, over 20 national commissions or similar groups have been authorized by Congress or the President to study water resources. A few of the more recent studies worth mentioning are:

National Water Policy Commission—1950

In the late 1940's, the Engineers Joint Council, made up of members of the American Society of Civil Engineers, the American Society of Mining and Metallurgical Engineering, the American Society of Mechanical Engineers, the American Institute of Electrical Engineers and the American Institute of Chemical Engineers, took steps to institute the creation of a National Water Policy Commission charged with the investigation and reporting upon the several elements affecting the orderly and economical development of the water resources of the country. The Council expressed their ideas to the Administration and on January 3, 1950, President Truman established the President's Temporary Water Resources Policy Commission by executive order. In July 1951, the Commission presented its report to the President. The Commission was made up of seven members; however, over eighty (80) water professionals participated on nine policy panels on: domestic and industrial water supply and pollution; flood control; navigation and inland water transportation; irrigation; hydroelectric power; recreation, fish and wildlife; water resources information; land drainage; and policies and general applicability. The Commission found four significant general principles should govern any discussion of national water policy. These principles are: "(1) Local, State and private responsibility should be preeminent and be consciously and effectively nurtured and extended in water project programming, execution and financing; (2) Bookkeeping should be clear and forthright and should be based upon full inclusion of all costs and reimbursements; (3) Costs should be collected from those benefited either directly or in a subsidiary way. General intangible benefits should preferably be regarded as a margin of advantage in project selection; and (4) Legislative authorizations and policies should be uniform for all Federal agencies responsible for water resources development."

The Commission also found, "Consideration and control of the waters of the United States are in the national interest, but not necessarily a function of the

Federal Government. On the contrary, that which can be done by the individuals should be done by him, and that which requires collective action should be done at the lowest governmental level practicable." The Commission was a little more circumspect in their criticism. They essentially blamed politics and Congress for the "haphazard development" of our nation's water resources.

The Commission's report, "Principles of a Sound National Water Policy" is a difficult read, but does contain some pearls of wisdom, which are valid today.

The Second Hoover Commission (Task Force on Water Resources and Power)—1953

The Second Hoover Commission was authorized by Congress and signed into law on July 10, 1953. The Second Commission was authorized to enter the field of policy—that is, to determine not only whether an existing function is being performed efficiently, but also whether government should perform it at all. One of the subdivisions of the Commission was the Task Force on Water Resources and Power. The Task Force summarized its ten principal findings as follows:

- (1) Imperative need exists for a clear definition of the role and policies of the Federal Government in the framework of a consistent national water policy, which will progressively promote conservation, and development of this vital natural resource for the Nation as a whole, as well as for States and local communities.
- (2) The Federal Government has assumed an ever-increasing share of responsibility for water resource and power development until it has become a dominant factor in enterprises, which should be outside its domain, as that domain is defined by the Constitution.
- (3) The Federal Government has not given sufficient consideration to non-Federal interest, opinion, and participation in planning water resources and power projects.
- (4) The Federal Government has used water resources and power development projects, which should be undertaken exclusively for economic purposes, to accomplish indirect social and political ends.
- (5) The Federal Government has paid too much of the costs of water resource and power development and has required too little of the beneficiaries.
- (6) The Federal Government has planned, constructed, and paid for water resources and power development projects, which are economically unsound and hence waste the national wealth.
- (7) From the standpoint of financial return to the Federal Government, Federal water resource and power projects which produce, or could produce, revenues are not operated according to sound business principles, and do not produce a return fairly related to their value; nor does the Federal Government uniformly require adequate contributions, either for the use of its money for capital outlay or for operation and maintenance costs.
- (8) The Federal Government's organization for carrying out its policies on water resources and power development lacks coordination, fosters competition among its agencies, causes controversy, confusion, duplication, and waste, and encourages, rather than curbs, bureaucratic ambitions.
- (9) The executive branch of the Federal Government has no effective means or procedures for accomplishing and independent and objective review of water resource and power projects proposed by its agencies.
- (10) The Federal Government has not provided adequately for the collection and analysis of basic data, which should determine the physical feasibility of water resource and power projects, and has undertaken projects based on inadequate data.

The Task Force concluded that the first objective of any "National Policy" should be a consistent Federal policy for water resources development that lessens the centralization of authority in the Federal Government and strengthens local authority and participation. The second objective should be the consistent application of sound principles and criteria to determining which projects would increase the national wealth and whether or not State and local interests are willing to shoulder financial and administrative responsibility commensurate with the benefits they receive.

Characteristics of both the National Water Commission of 1950, the Second Hoover Commission's Task Force on Water Resources and Power and the National Water Commission (outlined below) included: (1) membership composed of nationally recognized water resources professionals, and (2) conclusions calling for greater local authority and financial participation, less Federal involvement, and projects and programs which are based on sound cost-benefit analysis.

The National Water Resources Council—1965

The Water Resources Planning Act of 1965 established a cabinet-level Water Resources Council to study, coordinate and review water and related land resources requirements, policies and plans, and authorized funding for states to plan and implement related programs.

The Act established the Water Resources Council, composed of the Secretaries of the Interior, Agriculture, Army, Commerce, Housing and Urban Development, Transportation, and Energy, and the Administrator of the Environmental Protection Agency. The Council was required to study continually and assess biennially the adequacy of water supplies in each water resource region in the U.S. and the national interest in these; study continually the relation of regional or river basin plans to the requirements of larger regions, and the adequacy of administrative and statutory means for coordinating Federal water and related land resources policies and programs. The Council was also charged with assessing the adequacy of existing and proposed policies and programs to meet water requirements and make recommendations to the President.

In addition, the Act required the Council to establish principles, standards and procedures for Federal participants in preparing comprehensive regional or river basin plans and for formulating and evaluating Federal water and related land resources projects.

In theory it was a meritorious concept, in practice an abject failure. It was a bureaucratic nightmare, which imposed a overbearing Federal presence and meddling in local and regional water resources planning and decision-making. Mercifully, President Ronald Reagan put the Council out of its misery upon taking office in 1981.

National Water Commission—1968

Public Law 90-515 signed on September 26, 1968 established the National Water Commission. The Commission was tasked with providing the President and Congress with water policy recommendations "for the efficient, equitable and environmentally responsible management of its water resources." The final report, *Water Policies for the Future*, was presented on June 14, 1973, almost five years after its establishment.

The Commission consisted of seven members and from 19 to 44 staff members. The Commission approved a program of background studies covering 22 fields of interest related to water policy. The final report included seventeen chapters focusing on various aspects of water resources policy and develop and presented almost a hundred conclusions and recommendations.

For the most part it was a scholarly thought-provoking report. Where it attempted to address controversial aspects of water resources policy, such as; acreage limitation, cost sharing and water rights it was soundly criticized and discredited by many policy makers in Washington and elsewhere.

All of the aforementioned reports and studies advanced the public debate on water resources management and development and presented valuable recommendations. Unfortunately, few were ever read and over the years have served only to gather more dust.

That brings me to the most recent such report which is atypical of the previously mentioned commission studies in that it neither advanced the public debate nor presented valuable recommendations. In fact, it failed to comply with its Congressional mandate.

Western Water Policy Review Advisory Commission—1992

Pursuant to Title XXX of P.L. 102-575, Congress directed the President to undertake a comprehensive review of Federal activities in the nineteen Western States affecting the allocation and use of water resources, and to submit a report of findings to the President and Congress. From the very beginning it was an agenda-driven political beast. On his last day in office President George W. Bush appointed the Commission's members. Subsequent to its organizational meeting, President Clinton revoked the appointments of the Commission members and not until September 15, 1995 were the twenty-two members appointed and the Commission chartered by the Secretary of the Interior. It was then necessary for Congress to extend the Commission's final report due date to October 2, 1997.

In December 1997, the National Water Resources Association provided comments on the draft final report to the Commission. In the Association's opinion, the most significant single flaw in the draft report was its failure to follow the Congressional charge to the Commission. The Commission was directed to "[a] review problems affecting water resources development in the West; [b] assess current Federal programs with an eye towards reorganization or consolidation; [c] consider the water-

related problems of rural communities; [d] review the need for additional storage or other supply enhancement alternatives; [e] review the effectiveness of existing institutional arrangements in addressing water issues; [f] examine the existing legal regime, including those laws governing Federal/state relations; and [g] review the activities, authorities and responsibilities of the various Federal agencies.”

Rather than follow this Congressional directive, the Commission apparently developed its own agenda. This agenda focused not upon successful water resources development, but rather ecosystem protection; not upon a critique of the effectiveness of existing Federal agencies and programs, but rather the creation of yet a new bureaucratic “governance structure” with a basin commission at its head; not upon means to meet ever increasing consumptive water demands at the local level, but rather social and economic decision-making which may leave demands unfulfilled. In short, the Commission failed to produce a useful work product.

As far as recent water policy commissions are concerned, this is a brief summary of the good, the bad, and the ugly.

The search for a national water policy is akin to searching for the mythical El Dorado. Hydrologically we are not a homogeneous nation; therefore, it is unlikely that a comprehensive national policy is possible or desirable.

The Clean Water Act is arguably the most successful environmental statute ever enacted; yet, some of the “one size fits all” water quality regulations promulgated under the Act are nonsensical when applied to ephemeral streams and rivers in the arid West. In Alaska, the tiny town of Skagway is required to provide tertiary treatment of its sewerage even though the small volume is discharged into an 800 foot deep receiving body with an average 30-foot diurnal tidal fluctuation in the north Pacific Ocean. There are other examples too numerous to detail here.

H.R. 3561—a bill to establish the Twenty-First Century Water Policy Commission

The membership of the National Water Resources Association cannot support H.R. 3561 as written and it is unlikely that we would support the idea of yet another water policy commission in any form. We see little likelihood that the ultimate recommendations would add anything new to the body of knowledge on water resources management and development or national policy.

In the West, water infrastructure is every bit as important as transportation infrastructure. It is essential to the continued economic growth and development of the region. Water infrastructure needs continue to exist, particularly, rural water supply. However, on the whole, they are quite different from those of the past. No one envisions a future infrastructure development program and financing arrangements like the Reclamation program, which facilitated the development and unprecedented economic growth of the West during much of this century. Future projects are more likely to include non-structural features, environmental enhancement, proven best management practices, innovative approaches to water quality/quantity concerns and greater levels of non-Federal financing.

A better use of the money that would be dedicated to the Commission called for in H.R. 3561 would be to conduct a comprehensive national water resources needs assessment.

An essential element, which is currently missing from the Federal planning equation, is a basin-by-basin infrastructure and programmatic needs assessment. Such an assessment cannot be developed without the active involvement and, perhaps, leadership of the nation’s governors, water resources professionals, and state and local officials.

In addition, several Federal agency projects have been authorized by the Congress but remain unfunded. These projects should be reviewed to determine if they still meet the needs they were authorized to address. These projects should be prioritized on a state and regional (watershed) basis and Congress should determine what project benefits are in the Federal interest for funding purposes.

I thank the Chairman and the Committee for this opportunity to present NWRA’s thoughts and concerns regarding this legislation and we wish to continue to work with the Committee as they review and develop water policy for the nation.

Mr. CALVERT. And Mr. Lynch?

**STATEMENT OF ROBERT S. LYNCH, ATTORNEY AT LAW,
PHOENIX, ARIZONA**

Mr. LYNCH. Thank you, Mr. Chairman and members of the Subcommittee. My name is Bob Lynch. I am an attorney in Phoenix, Arizona, and I have practiced law for about 38 years now, 3 years

in the Marine Corps, 5 at the Justice Department doing litigation on these issues, and 30 years in private practice. And I have some prepared remarks which I would ask be made part of the record.

Mr. CALVERT. Without objection. It will be put in the record.

Mr. LYNCH. I hope in my testimony to provide you some observations from my service on the Water Rights Task Force. Remember that Assistant Secretary Bennett Raley chaired that effort. Speaking of efforts that got ignored, the Forest Service was the focus—was the initial focus of that inquiry, and to the best of my knowledge to this day still doesn't recognize the suggestions that we made in that report 5 years ago.

I am pleased that Mr. Linder recognizes the need to declare the primacy of the States in this legislation. I hope Mr. Keys gets his legal advice from Mr. Raley about how to express that and how to acknowledge the sanctity of our interstate compacts, especially on the Colorado River, and the sanctity of our State laws as we try not only to allocate, but administer our water laws.

This bill focuses, unlike the drought bills that I cited in my testimony, on the supply side of the water issue, and I think that is a good thing because there has been very little attention given to supply side strategies and a great deal of attention on how to manage demand in times of shortage, in times of drought. But I believe that the thing that is going to be most important if this Commission goes forward is that it study barriers.

We spent decades building up our water supply both before and after World War II, and then beginning about the time I joined the Justice Department, Congress began legislating barriers. I was there when President Nixon signed the National Environmental Policy Act. I handled the first case. It happened to be a water case involving the Corps of Engineers in my own State. That project was never built, and the flood control benefits of that project were never achieved. We have those barriers today, and we had a big fight a couple of years ago over Lake Mead when it was drawn down in a prior drought, and some nonnative vegetation managed to creep into the lake, and some endangered birds were in it, and we had ourselves a nice fight in Federal Court. Because 20 million people drink that water, there have to be limits on what we do, and we found some other ways to take care of this endangered bird.

We have that fight today in Phoenix. Lake Roosevelt, the largest water supply in central Arizona for 3-1/2 million people, has the exact same problem facing it now as Lake Mead did a couple of years ago. We have that problem on the Colorado River, as the Chairman is well aware. And in order to find strategies for endangered species, we have to find water. Well, that water is all being used, and so we have a problem.

And I would hope that you would consider some changes to the makeup of this Commission. Frankly, as an attorney in private practice, I am always nervous when government is coming to help us. It is sort of like getting reports from the generals in the middle of the war rather than from the war correspondents, and I would much more trust a group of outside observers looking at what government can and cannot do in examining how to address these barriers than having a top down, we are coming to get you—excuse me, we are coming to help you approach.

And last I would note that the drought study that you received in the year 2000, I believe that is the genesis of the two bills that were introduced last week, very plainly says there is no way to set national policy. Our water is local, our water politics is local, and all water rights are local. And if you go forward with this, I hope that those of us who are local can find a place to contribute.

[The prepared statement of Mr. Lynch follows:]

**Statement of Robert S. Lynch, Appointed Member of the
Water Rights Task Force**

Mr. Chairman and Members of the Subcommittee, my name is Bob Lynch. I am an attorney in Phoenix, Arizona. I have worked in the areas of water supply, water rights and water policy at the Justice Department and in private practice for nearly 35 years. I had the pleasure of serving on the Federal Water Rights Task Force, a Federal advisory committee established by the Federal Agriculture Improvement and Reform Act, P.L. 104-127. I was appointed in June 1996 to this seven-member committee by then Speaker of the House Newt Gingrich. The committee was chaired by Bennett Raley, now Assistant Secretary of the Interior for Water and Science. While your kind invitation does not specifically address the issue, I presume that I have been invited to testify at this hearing on H.R. 3561 because of my experience of having served on the most recent national water study that Congress directed. It is my pleasure to do so.

I would like to divide my testimony into three parts. First, I would like to briefly discuss with you the current drought situation that faces my state and my basin, the Colorado River Basin. I have read in the papers even as late as the end of last week about drought in the East and other parts of the country, so I believe sharing with you some of the developments in Arizona may be relevant to the purposes of this legislation. Second, I would like to talk to you about the mechanisms that H.R. 3561 proposes to use to address the mission of the body to be created by this legislation. Third, I would like to address the mission itself.

THE DROUGHT

A colleague of mine is fond of saying "drought, it's not just for the West anymore." If I can believe what I read in the papers, that is certainly true, in spite of recent rainstorms. The problem with drought is that, when it goes away, people forget it happened. But droughts will return. We know. We are in one again. Flagstaff, Arizona, near the Grand Canyon, has started water rationing. The drought has allowed wildfires to start months before our regular fire season. Homes burned down near Prescott, Arizona last week. Wildfires started so early this year that the agencies didn't have contracts completed for the slurry planes or the fire crews.

Last Friday, Secretary of Agriculture Ann Veneman was in Phoenix to meet with Arizona Governor Hull. The Secretary announced, at a press conference, drought relief from the Agriculture Department in recognition of the dry conditions and the significant impacts they are already causing even before our summer really begins. A copy of her letter is attached to this testimony.

Our entire basin is suffering. Snowpack as of May 1 in the Upper Colorado River Basin, where most of the snow collects, is an abysmal 30% of average. Indeed, a fish ladder for endangered fish on the Gunnison River in Colorado, a tributary to the Colorado River, had to be taken out of operation because of the lack of water in the river. And the Geological Survey is saying that this might be the front end of a 20-30 year cycle, at least in our basin. By contrast, there apparently is significant flooding in some Midwestern states from recent storms. Nevertheless, from what I have read, the recent rains in the Northeast still leave that area of the country short of water.

We need to remember that drought and floods are the opposite sides of the same coin and the coin is engraved "we are not yet in control of our water supply." There are a number of reasons why, and I will discuss some of them in the third part of my testimony, but suffice it to say that we have a serious problem.

ALTER THE STRUCTURE OF THE STUDY

H.R. 3561 would create a study committee of 17 members appointed by the President who will be handed a large mission to be accomplished in 12 months. This just will not work. I have attached a matrix to my testimony showing the makeup of various water studies over the last 40 years and the timeframes they were allotted. Speaking from personal experience, I can tell you that the mechanisms proposed in this legislation will seriously inhibit its chance of success.

First, there are too many people. We were a 7-member Federal advisory committee which met a dozen times in a year and took public testimony at most of those meetings, including a hearing in the United States Senate. Coordinating the schedules and demands of 7 people in order to get a report to Congress somewhere close to the allotted time was a nightmare. If you decide to study this subject, use a smaller group.

Whatever size group you use, don't have the study dominated or even populated by agencies. Regardless of whether you're talking about a Federal, state or local government entity, the natural tendency of public officials is to guard turf, expand turf where possible, and otherwise compete with sister agencies for attention. This same construct works at the state and local government level as well. If you want an honest read about the problem in a reasonable period of time, I would recommend using the 5 non-Federal representatives called for in H.R. 3561 but pick them from outside government. And don't pick people on the basis of their affiliation with a specific organization. Pick people on the basis of what they know and whether they have a reputation for good judgment.

Whether the President appoints a study group, if you decide to move forward with this legislation, or someone else does or several do, as with the advisory committee on which I served, do not require appointments in 30 days. That was supposed to happen with us and it didn't happen. There is just too much to do and too many other things to occupy attention. I would suggest that an appointment timeframe be somewhere between 60 and 90 days.

The larger the assignment you hand a group like this, the more time you must give them to address it. A one-year timeframe for the subjects covered in H.R. 3561 is just too short. You have to choose between narrowing the mission or lengthening the time or do some of each in order to come up with a construct that can produce something worthwhile.

Designate the support mechanism for any study group that you create. What agency is going to staff this effort? Where is the money going to come from?

As I read the provisions of the bill, they seem to conflict with the Federal Advisory Committee Act. If the study is to go forward, that problem must be remedied.

If the timeframe turns out to be more than one year, ask for annual interim reports and designate specifically the information you expect to receive. Hold their feet to the fire.

Require a minimum number of hearings for the period of time allotted and require that at least a certain number of them be held in different regions of the country. All water problems are local, virtually all state water laws are different in at least some respects and water politics are varied and often situational.

Direct Federal agencies to respond promptly, i.e., within 30 days, to any information request from the study group. Condition submission of testimony, data and materials from non-Federal interests on cooperation with the study group in terms of information requests.

In short, use action-forcing mechanisms like these I've suggested to ensure that the group has a chance of succeeding.

NARROW THE MISSION

H.R. 3561 outlines an impressive mission. A study group could take 10 years and not be able to get its arms around all aspects of water management.

More importantly, in my view, do not demand that the group recommend a comprehensive (national) water policy. I have been personally involved in reports that have been produced on this subject since the late 1960's and I firmly believe there is no way to have a comprehensive national water policy. Indeed, there is really no need to attempt to homogenize the subject of water supply, water quantity or water rights.

The bill does define the critical point, however. The problem is not the lack of a comprehensive national water policy. The problem is the barriers to problem-solving that Congress has raised from time to time.

Most, but not all, of these barriers are created by environmental laws. Some are merely created by lack of Congressional attention. Environmental laws such as the Endangered Species Act and the Clean Water Act not only raise barriers to existing water uses; they provide barriers to expanded conservation of water resources.

EPA has a construct known as a "zero discharge limitation". That means that water that is contaminated is required to be evaporated. Thus, this environmental regulation fights water conservation.

When Bill Ruckelshaus became Administrator of EPA, he was fond of saying that "dilution is not the solution to pollution". How times have changed. Now EPA is proposing a water quality trading policy that would, as a practical matter, allow dilution to be the solution to pollution. Water Quality Trading Policy, Proposed Policy,

67 Fed.Reg. 34709–10 (May 15, 2002). It may work. It will also require more water. The EPA white paper is suggesting that problems in the Gulf of Mexico and other places could be solved by throwing more water at the problem. How that will work in a drought is anybody's guess.

The materials circulated with H.R. 3561 mention a number of new technologies that could be employed. Some of them, like aquifer recharge, are already happening in places like Arizona and southern California. As you may know, Arizona has the most stringent groundwater law in the nation, and as a result, our cities, towns and farmers have gotten pretty good at conservation. But conservation of this nature doesn't create new water, it just saves water you already had. Finding "new" water will require dusting off some old strategies such as cloud seeding and vegetation management as well as promoting existing strategies in order to truly be effective.

One of the other things that could be studied is mandating that the Federal regulatory agencies that enforce our environmental laws come up with broader solutions. Whether it is EPA under the Clean Water Act or the Fish and Wildlife Service under the Endangered Species Act, agencies largely focus on compliance with their programs, not problem solving. Forcing the agencies to help find solutions while they are creating sidebars to water supply efforts should also be considered.

CONCLUSIONS AND RECOMMENDATIONS

I will not presume to tell you whether Congress should order a study of the present or future water supply problems we face. And perhaps the drought issue will receive adequate attention in the bills just introduced by Senator Domenici (S. 2528) and Congressman Hastings (H.R. 4754), and co-sponsored by members of the Arizona delegation. I will say that I believe that any study, if it is to be conducted, needs to be run by a small group consisting of people outside government who are intended to act as a filter for information from government at all levels, as well as from non-Federal organizations and individuals from the private sector. Give the person or persons who appoint the members of the study group adequate time to do so, mandate adequate staff support and financing, and give the study a chance to work by giving it enough time to do its job. Narrow the mission to something that can be achieved in the time allotted and direct the group conducting the study to devise specific recommendations, the level at which they would be implemented, the need for Federal legislation and the need for Federal incentives to motivate state and local governments and private organizations. If it were up to me, I would ask the group to focus on a study of barriers to better water supply management but that is your call. H.R. 3561 focuses attention on a significant issue. I fear, however, that, as introduced, the bill's study committee and its mission are unrealistically large. If you decide that such a study is desirable, I hope you will consider the recommendations I have made in this testimony about how to structure the group and the task.

Thank you for the opportunity to testify on this extraordinarily important subject.

[Attachments to Mr. Lynch's statement follow:]



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

MAY 17 2002

The Honorable Jane Dee Hull
Governor
State of Arizona
Phoenix, AZ 85007

Dear Governor Hull:

This is in further response to your letter of April 12, 2002, requesting a disaster designation for the State of Arizona due to losses caused by drought that occurred on January 1, 2001, and continuing.

The Department of Agriculture (USDA) has received and completed its review of the Damage Assessment Reports and survey information provided by the Arizona State Executive Director, Farm Service Agency (FSA). Based on this review, all counties except Yuma County have sustained sufficient production losses in a single enterprise to warrant a Secretarial disaster designation. Therefore, I am designating 14 Arizona counties as primary disaster areas. USDA is unable to confirm that sufficient production losses occurred in Yuma County; therefore, I am unable to approve your request for designation of this county as a primary disaster area.

In accordance with section 321(a) of the Consolidated Farm and Rural Development Act, Yuma County is named as a contiguous disaster county.

This designation makes farm operators in primary and contiguous counties eligible to be considered for low-interest emergency loans from FSA, provided eligibility requirements are met. FSA will consider each loan application on its own merits, taking into account the extent of losses, security available, and repayment ability.

Local FSA offices can provide affected farmers with further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann M. Veneman".

Ann M. Veneman
Secretary

Water Study Groups Analysis

Entity	Duration	Size	Makeup
Water Resources Council	3 years	7 members 2 associate members 2 observers	Exclusively made up of members of the cabinet
National Water Commission	3 years	7 members	Exclusively non-federal (citizen) appointees
Public Land Law Review Commission	6 years	19 members	Mixed, 6 members were non-federal appointees by president; 12 were members of Congress, the last was appointed by the original 18
Western Water Policy Review Advisory Commission	5 years	22 members	Mixed, 10 members were non-federal appointees by president; 12 were members of Congress.
Water Rights Task Force	1 year	7 members	Exclusively non-federal appointees.
H.R. 3561 21 st Century Water Policy Commission Establishment Act	1 year	17 members	Mixed, 8 members from fed agencies, 5 members non government interest groups, 2 members local government, 2 members state or Indian tribes.

Mr. CALVERT. I thank the gentleman for his testimony, and all the witnesses. I think in Mr. Linder's opening statement—and I am certain that Mr. Linder will speak for himself—but he said that he would be very flexible in working with the Commission and with groups that obviously represent water interests locally and various States, and that is extremely important. And I am sure we will work together to make sure that we don't have any unintended consequences of any commission that may be set up again to look at water issues in this country. But I think it may be appropriate, because, as Mr. Lynch pointed out, on the supply side of this problem, we have other challenges because of the Endangered Species Act and because of other Federal laws that we need to look at. So I look forward to working with Mr. Linder.

Mr. Flake, did you—you wanted to ask anything before you left? With that, I will recognize Mr. Linder.

Mr. LINDER. I just want to say I brought to this table a lot of questions and no firm answers, and I am very flexible because I don't know who should be on this Commission. We took the shape of another commission and used it as an example, but I have gotten some very constructive help from Dr. Vaux. And I want you to know that I considered all of your testimony to be very constructive, and it is very helpful to hear, and I would welcome your input. If you would like to send me a letter making some specific recommendations for the bill, I would be happy to have that.

Mr. OSBORNE. Yes. I can understand some discomfort with government intervention and oversight. And in the absence of government oversight in terms of water policy, what agencies or what alternatives would you suggest? And I guess I particularly address that to Mr. Donnelly and Mr. Lynch.

Mr. LYNCH. Mr. Chairman, Mr. Osborne, to the extent the Federal Government has identified in a future inquiry a series of roles to play—and obviously Congress is going to have to facilitate those roles, whatever they may be—I guess the point—the central point of my concern is that it is very hard for an agency head to be objective about the successes and failures of the programs assigned to that agency head, whether it is—I mean, Mr. Keys is, in my view, one of the best things that has happened in this administration. He is a very capable person, but he is also a human being, and he has a program and an agency to run, and frankly you could tell from his testimony he is pretty proud of it, and he has a right to be. But that is not the kind of outside look at this issue that I think retains objectivity.

Now, you can put all these agencies together, and, in my view, they will fight turf wars to see who can be the best at coming up with the best solution, or you can have an outside view. As I said, it is like having the war correspondents report about the war, because as you know, whiskey is for drinking, and water is for fighting, and we will fight over this. And if there is a way to set up a group of people whose job it is to inform you and who don't have axes to grind, I would suggest that the end product will be more useful and will be a more objective analysis of just what the Federal Government can and cannot do in addressing these problems.

Mr. OSBORNE. Your point is well taken, but if something needs to be done, where do we go—either one of you—because essentially it is easy to point out the problem, but what is the solution? Where do we go for an outside independent arbiter in this case?

Mr. DONNELLY. Independent arbiter. Let me back up just a little bit, because I think that there is a role for the Federal Government in water. There is a role for the State and local governments in water resources management and development. We in the West—our colleagues in the East, I should say, seem to be a little more comfortable with the Federal role than we are in the Western States. And water along the western United States has developed with the State as the key entity as far as allocation and supply. Independent arbiter of most disputes has been the court system. You may not agree with that, but—

Mr. LYNCH. I don't know if Mr. Donnelly is suggesting we turn this over to judges, but I would strongly disagree. Your point is very well taken, Mr. Osborne. There is no one who deals with water law who knows anything who is totally independent. If they are, they are asleep. You do the best job you can. I mean, basically on the Water Rights Task Force, the Senators that were the prime movers in establishing that just went out and ID'd people they thought would take the time, knew something, and would give the Congress back an honest read on what the problem was and what should be done about it. I don't know if we succeeded or not, but we tried.

Now, I guess what I am trying to say is that there are people in the private sector who care about this issue and who can devote time to it and can help address the questions about what agencies can do certain things and what they can't, and where the limitations are, where the conflicts are, where the barriers are, and where the duplication is. But I don't see the agencies being able to do that. It is kind of intuitive to their own purpose for existence.

Mr. OSBORNE. My time has expired.

Mr. DONNELLY. A lot of the commissions that have preceded this, the Second Hoover Commission's Water Policy Task Force, the Presidential commission that President Truman authorized by Executive Order, and the National Water Commission in 1968—was authorized in 1968 and completed its work in 1973, did some excellent work. What we need to is rather than reinvent the wheel, let us go back and take a look at what they recommended and what works today and what doesn't work today.

Clearly our country has changed dramatically in the last 30 years. Our population has grown tremendously. Yet the number of water supply structures that have been built, particularly in the western United States, are few and far between, and you can't expect the demands that are being put on our water supply to continue to be met by the systems that were in place in the 1950's and 1960's. At some point in time we are going to have to look at developing additional water supplies. That may be through desalinization, which is starting to get to the point where it is economically feasible. There are other possibilities out there. That is the place to start.

Mr. OSBORNE. I yield back my time.

Mr. CALVERT. Thank the gentleman.

Mr. Hayworth.

Mr. HAYWORTH. Chairman Calvert, thank you very much. For purposes of full disclosure, to listen to my friend from Nebraska and use the term "independent arbiter," at least an independent advisor for years since I have been involved in public life, has been my good friend Bob Lynch, attorney at law, in Phoenix.

Bob, we welcome you here today.

I apologize to all panelists for being late, and I thank my friend from Georgia for his efforts in this regard. The gist of what I am hearing here today in terms of long-term water policy, a lot of work has been done, and a lot of work has been ignored. And, Mr. Lynch, I am—given the fact that all these matters are interrelated, it may seem a bit tangential to ask this question, but I need to. Is your impression that the work you did in the most recent effort that was delivered to the Forest Service, was there hostility toward the product, or was there just apathy? Did it just become part of a process and go into a gaping hole of information or a repository that was never consulted?

Mr. LYNCH. Mr. Hayworth and Mr. Chairman, well, nobody shot at me, but I would say to characterize it merely as apathy would be incorrect. The Federal liaison to the Federal advisory committee blurred out during one of our final sessions, well, if we can't take the cattlemen's rights away from them, we will not get the cattle out of the forest. And too often agencies have agendas, and some

of them may lay dormant for years or even decades before they surface again.

I don't know what the current attitude of the senior management of the Forest Service is now, but I have to tell you, I was here a year ago today in front of this Subcommittee—joint hearing with the forest Subcommittee, and my testimony then was we have been ignored. To the best of my knowledge, we are still being ignored, and ignored by the Justice Department in their positions in Federal litigation that is going on as we speak in the State of Wyoming and the State of Washington.

I don't know. Hostility to me—I am sorry from my Marine Corps background—it means someone is shooting at you. So nobody is shooting at me that I know of.

Mr. HAYWORTH. Well, to use another infamous phrase from previous government service, I guess, uttered by former Senator Moynihan in a different role in the Nixon administration, it is not benign neglect either. I mean, what you are telling me is the essence of your testimony was that in the previous administration you may not call it hostility, but there was a different philosophy that permeated the mindset of many involved that was not interested in information for the common good, but to arrive at a foregone conclusion.

Mr. LYNCH. Mr. Chairman, Mr. Hayworth, that is correct. It wasn't only the Forest Service, it was also the Department of Justice and the positions they were taking in ongoing litigation, which I monitored, from Idaho, Colorado, Wyoming, Washington, pushing limits of Federal law to assert new theories about why Federal Government should control water resources in our western basins. And in addition to environmental laws, those barriers have existed and may still exist.

Mr. HAYWORTH. And may be just the challenge of what, I guess, political scientists have come to call bureaucratic inertia and some of the challenges and personnel involved and the outlook there as well.

Desalinization, Mr. Donnelly. It looks like what was once an idea, we are back to the future, and that was an idea that had great prevalence years ago, especially in our situation in Arizona, and it appears again. You just mentioned it. Is that illustrative, or do you think we can head in that direction?

Mr. DONNELLY. I think it was an economic issue more than anything. When I first started working in water resources, I think the cost for an acrefoot of desal water was about \$2,000 per acrefoot. That is cost-prohibitive almost anywhere. Now I am told that the cost is approaching \$600 an acrefoot. That is starting to get competitive, particularly in southern California and areas like that.

Mr. HAYWORTH. I thank you, sir, and thank all the panelists and my good friend Bob Lynch.

And, Mr. Chairman, I thank you for your indulgence.

Mr. CALVERT. One last comment. Mr. Linder had to go to another appointment. I think you heard from him again about the flexibility in working with all of you to fashion this Commission. There is no other purpose other than trying to improve the water supply in the country and trying to mitigate for some of the crises that we have throughout the United States today, not just in the West. But

I found out since I have been Chairman of this Committee we have water problems all over the place, so it is a challenge.

So with that, I thank all of you for your testimony and answering our questions and look forward to working with you in the future.

And we are going to now recognize our last panel: Mike Kurle, Manager of the West River/Lyman-Jones Rural Water System, South Dakota; Frank Means, Councilman of the Oglala Sioux Tribe, Chairman, Oglala Sioux Tribe Economic and Business Development Committee.

STATEMENT OF MIKE KURLE, MANAGER, WEST RIVER/LYMAN-JONES RURAL WATER SYSTEMS, INC., SOUTH DAKOTA

Mr. KURLE. Mr. Chairman, members of the Committee, my name is Mike Kurle. I am the manager of West River/Lyman-Jones Rural Water Systems, and I want to take this opportunity to thank you for the opportunity to appear before you.

We did bring a prop with us to show you the area that the Mni Wiconi project covers in South Dakota and give you some idea of the immensity of this project. Shown on the map is approximately 12,500 square miles that this project covers. It takes up a major portion of western South Dakota. I am proud to join you and my good friend Mr. Frank Means of the Oglala Sioux Tribe in representing the Mni Wiconi sponsors.

Like the other sponsors, West River/Lyman-Jones is highly supportive of H.R. 4638. It will provide the necessary funding to complete the project and extend the completion date to 2008.

Before I turn my remarks to the discussion of the infrastructure that H.R. 4638 will provide, I would like to underscore the role that this project has played in changing the history of western South Dakota and its social fabric. On Saturday last we attended the grand opening of the water treatment plant. Members of the Oglala, Rosebud and Lower Brule Sioux Tribes joined members of West River/Lyman-Jones to celebrate the start of the delivery of clean water from the Missouri River. One of the Oglala speakers spoke eloquently of the time in the late 1980's when Senator Malcolm Wallop held a field hearing in the early stages of this project attended primarily by non-Indian farmers and ranchers.

When the Oglalas heard about the project in the hearing, the initial reaction was to oppose the project as a violation of their 1868 treaty rights. The Oglala in-house counsel at that time, Mr. Gonzalez, suggested to the tribal council that the Oglalas also had deplorable drinking water situations in common with the off-reservation farmers and ranchers, and that this project was one in which we could all work together. This was a historic event in the area of our diverse cultures. Working together had previously been unheard of.

The relationship has become a model for South Dakota and the other Western States. We work extremely well together and are bringing a major improvement in the quality of life to this region. One aspect of the improvement is drinking water. The other aspect is the fact that we have developed a mutual understanding and a mutual respect for each other's problems. We now appreciate our respective capabilities skills and cultural differences, and we are working together rather than against each other.

Let me now turn to what it means to have good water in our region. This area of South Dakota has water that even cattle will not drink. Most of the rural members of West River/Lyman-Jones rely on the cattle industry as their No. 1 economic business. The project will not only permit them to use water in their ranch headquarters, they will also permit as much as a 30-pound additional weight on the calves due to the quality of the water. This would translate to 30 or \$40 per calf at weaning time, and it is a major economic improvement to South Dakota, which supports about 180,000 head of cattle.

The communities of West River/Lyman-Jones also benefit from improved water. The community of Philip, South Dakota, has the worst water in the State of South Dakota and was under EPA orders to take corrective action. With project funds we have been able to construct a distribution system between the communities of Wall and Philip, a distance of 35 miles. We will deliver water from Wall until we have a completed Oglala core line from the Missouri River. At that time, the pipeline we have just constructed will deliver Missouri water to both Philip and Wall.

Our communities along Interstate 90 rely on tourism. In the past, motorists have taken rest stops for coffee and water east of our service area or west because of our reputation for bad water. This project is changing that. This fall the communities of Reliance, Presho, Vivian, Draper and Murdo, all along Interstate 90, will receive either the Oglala or Lower Brule water from the Missouri River, and our reputation for good water will begin to grow. Tourists will stop, our economy will grow, and our children will have employment opportunities in their hometown. The amendment to add 58 million to the project ceiling is needed to complete valuable components to this system that will serve West River/Lyman-Jones and the other sponsors.

In closing, the support of the Committee for H.R. 4638 will be greatly appreciated by all of us. Thank you, Mr. Chairman.

Mr. CALVERT. Thank the gentleman.

Mr. CALVERT. Mr. Means, you are recognized.

STATEMENT OF FRANK MEANS, COUNCILMAN, OGLALA SIOUX TRIBE, CHAIRMAN, OGLALA SIOUX TRIBE ECONOMIC AND BUSINESS DEVELOPMENT COMMITTEE

Mr. MEANS. Anpefu Wasbe Hau Kolapi. Good day. Hello, friends. My name is Frank Means. I am the chairman of the Economic and Business Development Committee of the Tribal Council of the Oglala Sioux Tribe. I am representing John Steele and the membership of my tribe. President Steele has filed a formal written statement for the record that was developed in cooperation with all sponsors. I am joining with Mr. Mike Kurle, manager of West River/Lyman-Jones, to represent the Mni Wiconi project sponsors. Those sponsors are the Oglala Sioux Tribe, West River/Lyman-Jones, Rosebud Sioux Tribe, and Lower Brule Sioux Tribe. The latter two sponsors have contributed to the written testimony filed with the Subcommittee and have joined us in the audience for this hearing.

I thank the Chairman and the Subcommittee for giving this matter attention and providing the opportunity for this hearing.

H.R. 4638 is an extremely important bill for the Mni Wiconi project. It adds \$58.8 million to the project construction ceiling, bringing the Federal share to 391 million. It also extends the project completion date from 2003 to 2008.

I would like to bring to the Subcommittee's attention some of the important points in the written testimony. First you should know that this project has brought the Lakota people together in western South Dakota together with non-Indian farmers and ranchers in an endeavor for the common good of our respective people. This is the most significant step toward a better understanding amongst us since 1889. This was when the Great Sioux Reservation created by the Treaty of 1868 was divided into smaller reservations to make room for non-Indian settlers. The Lakota leaders and membership have gained respect for the people served by the West River/Lyman-Jones, and we feel they have gained respect for our capabilities and desire to improve the quality of life in this part of South Dakota. I thank Mr. Kurle for his efforts in this respect.

The Subcommittee should also know that improvement in the quality of life on Pine Ridge and other reservations of the project is a necessity. On my reservation the per capita income is the lowest in the Nation, less than \$4,000 annually. A large majority of the population falls below poverty level. This poverty is reflected in the quality of our infrastructure and opportunity for future economic development. Opportunities are limited or nonexistent. This project is one of several building blocks that must be placed before people can progress. It is an essential building block.

In this building, in this city and across the Nation, most can take for granted the availability of good water. This was not the case on Pine Ridge until this project began and will not be the case on Pine Ridge until this project is completed. I can show you that most housing on Pine Ridge is well below standard. I can also show you plastic containers of all types around and inside those homes that are used to haul and store water for drinking and cooking and bathing. This project is changing that circumstance. Many people can now use the plumbing in their homes to deliver safe and clean water.

The consequences of poverty and the historic absence of safe water on Pine Ridge are deep. Water-related diseases have been a significant problem, but impetigo, shigellosis, hepatitis, gastroenteritis and others are not as prevalent as our population is beginning to receive water from the project. And there has not been a hepatitis outbreak since the project was initiated on the reservation.

I am deeply concerned about other diseases associated with poverty. Our staff has examined mortality rates for heart disease, cancer and diabetes. These findings are deplorable. I am informed that the discounted future health care costs for these three prominent diseases will be .8 to 1.6 billion above the cost typical of the population with normal incidence of these diseases over the next 50 years. These are extra costs, not total costs.

I relate these findings to inform the Subcommittee that while the Mni Wiconi project cannot provide a full answer to these diseases and the excessive Federal costs for health care associated with these diseases, the Mni Wiconi project is a step in the right direc-

tion. It will provide an essential foundation for improved earnings and employment, which in turn will lower the rate of incidence and mortality associated with these diseases.

In closing, the support of the Subcommittee for H.R. 3468 will be greatly appreciated by all sponsors in this invaluable project. Pilamaya. Thank you.

Mr. CALVERT. Thank the gentleman.

Mr. CALVERT. I think this is a good piece of legislation. I read through the bill, and I think there is a considerable amount of support for it, so I look forward to working with Mr. Thune to mark this bill up as soon as possible and report it out to the floor.

And with that, I recognize Mr. Thune.

Mr. THUNE. I appreciate that very much, Mr. Chairman.

As the gentlemen have noted, this is a critically important piece of legislation for South Dakota. The sponsors of this project have worked extremely hard over a long period of time. It is over 50 percent complete, and I can bear witness to the fact, having grown up and lived a good part of my life in western South Dakota, the water needs out there for healthy and safe and reliable supply of drinking water is critically important, and I appreciate your willingness to work with us, the conversations that we have had about this previously, and your recognition of the importance of this project. And I want to thank the gentlemen for being here today and testifying to it and giving us an update of where things stand, and to let them know that we will work very, very hard to see that the authorization makes its way through the Congress so we can continue to do the important work that is necessary to get this project across the finish line.

So thank you again for being here, and you, Mr. Chairman, for giving us the opportunity to be present to hear this testimony this afternoon.

Mr. CALVERT. Again, I want to thank you, Mr. Thune, for your leadership in this, and I have a schedule here from my staff. I hope we will mark this bill on June 5. We will have it hopefully reported to the floor as soon as possible thereafter and get this bill completed and made into law, because it is a good project. And I want to thank the witnesses for coming out long distance from South Dakota, and we wish you well, and we are adjourned.

[Whereupon, at 3:30 p.m., the Subcommittee was adjourned.]

[Information submitted for the record on H.R. 3561 by Michael J. Brophy, Chairman, Western States Water Council follows:]

Statement of Michael J. Brophy, Chairman, Western States Water Council

My name is Michael Brophy. I am Chairman of the Western States Water Council (the Council). The Council is comprised of representatives appointed by the governors of eighteen western states. The Council has been charged with fostering interstate cooperation in water resources and protecting vital state prerogatives with regard to the management of water resources in the West. While necessarily expressing personal views in my testimony, I will rely heavily on positions of the Western States Water Council consistent with the request by the Subcommittee. To this written testimony, I will also append for the record positions of the Council for your reference.

The Subcommittee has invited testimony and statements regarding H.R. 3561, the 21st Century Water Policy Commission Establishment Act.² I need to state in preface that the Council has no position regarding this bill. However, this statement is provided to convey matters pertinent to Congressional consideration of this bill. I believe providing such a statement is particularly appropriate, because states play

the pivotal role in both water quantity allocation and water quality protection in the West. Further, a recent response to a similar commission as that proposed in H.R. 3561, the Western Water Policy Review Advisory Commission, provides a context for my remarks.

I wish to commend the sponsors for their interest in water resources and the purpose of the bill to help assure adequate supplies for the future. This priority is underscored by the current extent of drought in many areas of the Nation. Stream flows in much of the West are expected to be well below normal. The bill's aim to better coordinate the programs of various Federal agencies regarding water is also laudable.

The Federal Government has claims to substantial amounts of water in the West on its own behalf, given the extent of Federal land ownership. These claims are most often presented within the context of state general stream adjudications, where the water rights of all claimants in a given stream system can be ascertained.

While virtually every western state needs additional supplies to meet growing consumptive use demands, western states also recognize the need for existing water infrastructure rehabilitation. Further, they also recognize as a significant challenge, the need to sustain in stream values generally, and specifically for maintaining and enhancing water quality, and for protecting endangered species. The West is often subject to wide swings in water supply. Thus, states identify drought planning and response as a priority problem, and similarly flag flood planning and response. Overlaying many of the above challenges are legal and institutional conflicts facing western states, involving Federal/state relationships, conflicts between states, and disputes among water users, among others.

The Western Water Policy Review Advisory Commission was established in 1996 to make recommendations to address these and a broad array of related challenges affecting the West. Specifically, the Commission was charged by the Congress to prepare a report to the President on "Federal activities in the nineteen western states which directly and indirectly affect the allocation and use of water resources." Given this broad mandate and the potential import of the Commission's undertaking, the Council spent considerable time in reviewing its work products, including its final report.

The Council found the report's recommendations flawed in several respects. I have attached a copy of the official position statement of the Council in this regard for the Subcommittee members' reference. The "governance recommendations," contemplating what we perceived as a top down approach to water management, and its recommendations pertaining to state water law and institutions, which advocated a fundamental change in Federal deference to state water law, are specifically addressed in the attached position.

In the process of working with the Commission, the Council was asked by the Commission to provide its perspectives on directives given to the Commission; namely, to (1) review present and anticipated water resource problems affecting the nineteen western states; (2) review the problems of rural communities relating to water supply, potable water treatment, and wastewater treatment; (3) review the need and opportunities for additional storage or other arrangements to augment existing water supplies, including water conservation; (4) examine institutional arrangements to address problems of water allocation, water quality, planning, flood control, and other aspects of water development and use; and (5) review the respective roles of both the Federal Government and the states and examine Federal-state relations regarding various aspects of water allocation and use.

I have enclosed a copy of the Executive Summary from the Council's report. In summary, the report found that to meet the increasing demands for water, several states are considering additional surface reservoirs, which, for the most part, will be smaller in scale than the large projects of the past, more innovative, environmentally sensitive, and financed primarily from state and local resources. The re-allocation of water from existing uses to other uses will likely accelerate, chiefly from agricultural uses to other uses, primarily municipal. While states will often facilitate such transfers to meet specific water supply and environmental challenges, in some cases they may restrain market transfers, not only to protect third parties, but also the public interest in general.

While recognizing the limits of water conservation in providing "new" water and additional caveats relating to the site-specific impacts of water conservation measures, states are carefully considering opportunities to "stretch" existing supplies of water through more efficient use, reuse, and reservoir reoperation (prior to the development of new storage facilities). States are further exploring opportunities to cost-effectively manage ground water recharge, recognizing it as a potentially significant storage alternative, and some states are further pursuing the potential of desalinization and weather modification to augment existing supplies.

As the emphasis on the importance of water conservation increases, states are developing and adopting a number of programs to encourage such measures as low water-use landscaping, and water rates that encourage conservation in urban areas, and development of conservation plans and incentives and leak detection programs in rural/agricultural settings. The reuse of wastewater effluent is also increasing. Many communities are currently reusing effluent for landscape and agricultural irrigation. To facilitate a reallocation of existing uses to augment supplies in areas of relative scarcity, some states have established water banks, while others have adopted measures to streamline the transfer process.

Western states have made innovations in their laws and institutions in order to augment and protect instream flows and to incorporate consideration of the public interest in their water right application and transfer processes. States are also endeavoring to incorporate innovations in their water quality programs, particularly regarding non-point source pollution. States have adopted various measures to deal with the problem of ground water depletion. States have also strengthened their capacity to deal with floods and drought. Innovations to improve information on water availability and use are common.

States in the West have recognized and moved to enhance the potential value of local watershed coordination initiatives. As conflicts over water use intensify in an era of both increasing and changing demands, states are also addressing the need to deal more effectively with these disputes. For a variety of reasons, states are also increasing their emphasis on maintaining and enhancing the environment. These reasons include, but are not limited to, Federal mandates such as the Endangered Species Act and the Clean Water Act.

This report thus underscores that states are taking initiatives to address the water challenges that we face in this country. In a very real way, these state efforts collectively represent a "national" water strategy. Nevertheless, the Federal Government's role is vital.

Given the diminishing Federal resources available to carry out the requirements of these and other Federal acts, and the concurrent increase in the state burden for environmental protection, states urge that increased flexibility be given regarding their implementation, so that states and others can tailor programs and prioritize resources to meet real needs. Streamlining Federal permit processes is also important. The Federal Government should encourage innovations, which frequently involve market incentives and non-regulatory tools, as they have often been found to work more effectively than top-down regulation. The Council has, for example, urged flexibility in implementing the Total Maximum Daily Load program under the Clean Water Act. Further, the Federal Government continues to have an important role with regard to disaster response and other mitigation associated with droughts and floods. In this regard, there is now a bill before the Congress to help the nation more effectively prepare for drought.

"The National Drought Preparedness Act of 2002" was introduced on May 16, 2002, by Rep. Hastings (D-FL) and Rehberg (R-MT). The bill would establish a comprehensive national policy that statutorily authorizes a lead Federal agency for drought, and delineates the roles and responsibilities for coordinating and integrating Federal assistance for droughts. The bill is intended to move the country away from the costly, ad-hoc, response-oriented approach that characterizes current Federal drought programs, and moves us instead toward a proactive, preparedness approach. This is accomplished through the authorization of the drought fund which would be available for the development and implementation of drought preparedness plans at all levels including the watershed, local, state, tribal and national. The drought plans will not be mandated in a top-down manner, but rather encouraged through incentives. The bill recognizes the importance of allowing flexibility so that plans are developed to address local needs and in a manner that is acceptable to the people affected by the plan.

There is another bill before the Congress which is also important to western states. The Congress should address the inequity that now results from exempting the Federal Government from paying any filing fees or costs associated with state general adjudications. As previously mentioned these adjudications establish the relative rights of all parties within a water basin, including the considerable number of claims by the Federal Government. The Federal Government should not be exempt from paying its fair share of fees that provide necessary funding to accomplish a purpose which is directly in their interest. I have attached the Council's position which explains our support for a remedy, now before the Congress in the form of S. 447.

There is also a significant need for the Federal Government to maintain and rehabilitate its existing water storage infrastructure, and to work with states and others in providing reliable water data. In particular, as Congress considers the budget,

we urge it to recognize the serious need for adequate and consistent Federal funding to maintain, restore, modernize, and provide for targeted expansion of NWCC's SNOTEL System and Soil and Climate Analysis Network (SCAN), and USGS's Cooperative Stream Gaging Program and National Stream Information Program, with a primary focus on coordinated data collection and dissemination. I have appended a position recently adopted by the Council, together with a letter that was recently sent explaining the western states' position in support of these programs.

Finally, I wish to reiterate the importance of the long-held Congressional policy of deference to states regarding water management. States are moving to address the challenges they face in water resources. Federal preemption of state authority is not the way to address the complex challenges associated with water management in the West. Rather, what is necessary is encouraging partnerships between the state and Federal agencies in the development and implementation of key policies, supporting the pivotal role states must play in addressing these challenges, and affording flexibility for ongoing innovation at the state level in order to effectively carry out this role.

Thank you.

STATEMENT OF THE WESTERN STATES WATER COUNCIL

Introduction

The Western States Water Council is an organization representing eighteen states. Members are appointed by their respective governors to address a broad range of water policy issues affecting the West. In this context, the Council responded to the recommendations of the Western Water Policy Review Advisory Commission (WWPRAC) in a letter dated November 14, 1997. The Commission had been charged by the Congress to prepare a report to the President on "Federal activities in the nineteen western states which directly and indirectly affect the allocation and use of water resources...." The Council understood the difficulty of the task undertaken by the Commission and spent considerable time itself in reviewing draft reports and recommendations, as well as the Commission's final report. While commending the Commission for the time spent and commitment made by the Commission and its staff, the Council in its November 1997 letter expressed concerns with several of the Commission's recommendations. At the beginning of a new Congress and Federal Administration, the Council wishes to reiterate the concerns expressed in its earlier letter in the form of this position statement.

Governance

The Council takes issue with the Commission's primary recommendations related to "fundamental changes in institutional structure and government process...." incorporating top-down approaches to water management by Federal river basin commissions, which have been tried and failed in the past. Such an approach is the antithesis of the local bottom-up watershed approaches to identifying and solving water-related problems, which have gained favor and momentum westwide. The report's overall reliance on Federal action and authority contrasts with existing interstate compacts and the growing recognition of the pivotal role states must play if we are to successfully deal with the complex challenges we face in water resources. In order to effectively carry out this role, flexibility and innovation at the state level is necessary. This emerging model for water governance moves away from Federal mandates and institutional structures.

The final report states an intention to support such local initiatives. However, the suggested use of Federal basinwide governance pilot projects ignores the success of many innovative state and local efforts undertaken without the need for Federal direction or Federal leadership, and threatens further successes by the imposition of the proposed governance structure.

Importantly, the final report fails to define the problem or problems that require a Federal solution in the form of a Federal river basin plan to be developed by a Federal river basin commission. Local watershed councils or groups should be allowed to define and resolve problems without forced Federal solutions as a condition of priority Federal financial assistance and expedited regulatory action. While enhanced Federal policy and budget coordination, as well as expedited regulatory reviews and decisions, are commendable objectives, the prospect for their attainment is dim. The proposal for Federally created and operated top-down river basin commissions is unworkable and unacceptable.

Conflicts with State Water Law and Institutions

The Council has serious concerns with other recommendations in the report which either directly conflict with existing state water law and policy, or fail to provide for adequate partnerships between the state and Federal agencies on key policy issues. For example, while the report states an intention to "respect" state water law, the report also recommends changes in state management of ground water and allocation of conserved water which are contrary to current state laws.

Recommendations relative to the review of authority and operations of existing dams and hydroelectric facilities, would promote Federal objectives without adequately addressing concomitant state interests. Other recommendations would condition distribution of Federal funds based solely on Federal policy considerations without adequate state and stakeholder input. Such undertakings will require effective partnerships between state and Federal agencies, as well as affected stakeholders.

Summary

The Federal Government's preemption of state authority is not the way to address the complex issues associated with western water management. The report, if implemented, would move us in the wrong direction, adversely affecting states' abilities to efficiently address our water resource problems. The suggested Federal role would create more problems than it would resolve. The recommendations regarding state authority are placed in the context of the report's conclusions that would undermine the long-established congressional policy of deference to state water allocation law. The Western States Water Council strongly opposes this and similar recommendations in the report. More detailed comments on the report were provided by many of our member states.

The Council invites reference to a published report prepared by it for the Commission entitled, "Water in the West Today: A States' Perspective." This report was prepared by Council members and staff in response to a request from the Commission. The report relates to directives given to the Commission to: (1) review present and anticipated water resource problems affecting the nineteen western states; (2) review the problems of rural communities relating to water supply, potable water treatment, and wastewater treatment; (3) review the need and opportunities for additional storage or other arrangements to augment existing water supplies, including water conservation; (4) examine institutional arrangements to address problems of water allocation, water quality, planning, flood control, and other aspects of water development and use; and (5) review the respective roles of both the Federal Government and the states and examine Federal-state relations regarding various aspects of water allocation and use.

The Council's report (published by the Commission) is based on responses elicited through a written request for information from the Council's member states, as well as several subsequent telephone conversations. Appendix I of the report contains the individual state responses, which exemplify both the commonality and diversity of challenges associated with the management of water resources in the West. Appendix II contains relevant policy positions of the Council, as well as the Western Governors' Association, with which the Council is formally affiliated.

WATER IN THE WEST TODAY

EXECUTIVE SUMMARY

PREFACE

The following represents an attempt to summarize some basic points drawn from the report. These observations and conclusions do not necessarily represent positions of the Western States Water Council, or any of its member states. Rather, they consist of the author's view of salient points drawn from state responses in order to provide a sense of westwide perspectives. They are listed in relation to questions posed to western states by the Western Water Policy Review Advisory Commission, through the auspices of the Council.¹

¹The original questions posed to the states are abbreviated in this report so as to clarify the state responses summarized herein and to consolidate those portions of the responses relating to the Federal role under section III.E.

SUMMARY OF STATE RESPONSES

1. *Please identify and briefly describe significant present and anticipated water problems in your state.*

In the arid West, providing adequate water supplies to meet future demands continues to be a priority. Despite the fact that the West represents the most urbanized region in the country, western states are especially cognizant of water needs of rural communities. Western states also remain concerned about the claims being exerted by Indian tribes to water resources and the potential of such claims to disrupt existing rights in non-Indian communities, underscoring the desirability of cooperative efforts with the tribes and their Federal trustee in addressing tribal needs.

While virtually every western state identifies as an area of concern the need for additional supplies to meet growing consumptive use demands, they also recognize the need for existing water infrastructure rehabilitation. Further, many of them also recognize as a significant challenge the need to meet expanding environmental demands to sustain instream values generally, for maintaining and enhancing water quality, and for endangered species specifically.

The West is often subject to wide swings in water supply. Thus, virtually an identical number of states identify drought planning and response as a priority problem, as do those who similarly flag flood planning and response. Overlaying many of the above challenges are legal and institutional conflicts facing western states, involving Federal/state relationships, conflicts between states, and disputes among water users, among others.

2. *Identify and briefly discuss problems of rural communities in your state relating to water supply, potable water treatment, and wastewater treatment. Please briefly describe any programs in your state to provide assistance to rural communities relating to water supply, potable water treatment, and/or wastewater treatment.*

Inadequate supplies of water for rural communities represent a primary concern in the West, particularly in times of drought. The need to augment water supplies for rural communities is magnified by the requirements of the Federal Clean Water and Safe Drinking Water Acts. There is an increased need for funding to achieve compliance with the requirements of these laws and to address other problems of aging public water systems. Several states are also concerned about the adequacy of training for operators of water and wastewater treatment facilities.

Just as the problems confronting western states regarding rural communities are similar, western states have much in common regarding programs to address those problems. They continue to provide financial assistance for small water supply systems in the form of various loan and grant programs. Western states also have programs to provide assistance to rural communities facing environmental compliance problems. In every state, direct financial assistance with the development of drinking water and wastewater treatment systems comes through state-administered programs under the Federal Safe Drinking Water Act and the Clean Water Act.² Other state-administered programs augment these resources. Programs to provide technical assistance to rural communities relating to the operation and management of water and wastewater treatment facilities are also common. Notwithstanding these programs, there is a need for Federal support to relieve the financial stress imposed on these communities by Federal laws and regulations.

3. *Describe the need and opportunities for additional storage or other arrangements to augment existing supplies including, but not limited to, conservation.*

To meet increasing demands, several states are considering additional surface reservoirs, which, for the most part, will be smaller in scale than the large projects of the past, more innovative, environmentally sensitive, and financed primarily from state and local resources. Reallocation from existing uses to other uses will likely accelerate, chiefly from agricultural uses to other uses, primarily municipal. While states will often facilitate such transfers to meet specific water supply and environmental challenges, in some cases they may restrain market transfers, not only to protect third parties, but also the public interest in general.

While recognizing the limits of water conservation in providing "new" water and additional caveats relating to the site-specific impacts of water conservation measures, states will carefully consider opportunities to "stretch" existing supplies of water through water conservation, reuse, and reservoir reoperation, prior to the development of new storage facilities. States will further explore opportunities to cost-effectively manage groundwater recharge, recognizing it as a potentially significant

² See related discussion on pp. 38 - 41.

storage alternative, and some states will further pursue the potential of desalinization and weather modification to augment existing supplies.

4. *Please provide illustrations of significant innovations in water management, water use, water law, or other areas related to water in your state at the state, regional, or local level.*

As the emphasis on the importance of water conservation increases, states are developing and adopting a number of programs to encourage such measures as low water-use landscaping, and water rates that encourage conservation in urban areas, and development of conservation plans and incentives and leak detection programs in rural/agricultural settings. The reuse of wastewater effluent is also increasing. Many communities are currently reusing effluent for landscape and agricultural irrigation.

Desalting research, including construction of pilot facilities, is exploring the potential for cost effective treatment. Weather modification research is also progressing in various states. To facilitate a reallocation of existing uses to augment supplies in areas of relative scarcity, some states have established water banks, while others have adopted measures to streamline the transfer process.

Several western states have made innovations in their laws and institutions in order to augment and protect instream flows and to incorporate consideration of the public interest in their water right application and transfer processes. States are also endeavoring to incorporate innovations in their water quality programs, particularly regarding non-point source pollution.

States have adopted various measures to deal with the problem of ground water depletion. States have also strengthened their capacity to deal with floods and drought. Innovations to improve information on water availability and use are common.

Several western states have recognized and moved to enhance the potential value of local watershed coordination initiatives. As conflicts over water use intensify in an era of both increasing and changing demands, states are also addressing the need to deal more effectively with these disputes.

5. *Please discuss the manner in which Federal water-related programs and activities affect your state and water uses within your state, either positively or negatively. Provide examples where possible. Also describe state laws and programs that are effectively facilitating the accomplishment of Federal statutory purposes.*

For a variety of reasons, states are increasing their emphasis on maintaining and enhancing the environment. These reasons include, but are not limited to, Federal mandates such as the Endangered Species Act and the Clean Water Act. Given the diminishing Federal resources available to carry out the requirements of these and other acts, and the concurrent increase in the state burden for environmental protection, states urge that increased flexibility be given regarding their implementation, so that states and others can tailor programs and prioritize resources to meet real needs. Streamlining Federal permit processes is also important. The Federal Government should encourage innovations, such as those described in the state responses, which frequently involve market incentives and non-regulatory tools, as they have often been found to work more effectively than top-down regulation.

Locally-driven watershed efforts have the potential to solve complex water resource issues. The Federal Government has recognized and acted on this potential, but must deal with the emerging possibility for conflicting and counterproductive efforts among agencies involved in such initiatives.

There is a significant need for the Federal Government to maintain and rehabilitate its existing water storage infrastructure, and to work with states and others in providing reliable water data. Further, the Federal Government continues to have an important role with regard to disaster response and other mitigation associated with droughts and floods.

RESOLUTION OF THE WESTERN STATES WATER COUNCIL

WHEREAS, water is the lifeblood of each of the arid Western States, the allocation of which determines the future of each Western State's economic, environmental, social and cultural fortunes; and

WHEREAS, each Western State has developed comprehensive systems for the appropriation, use and distribution of water tailored to its unique physiographic, hydrologic and climatic conditions found within that state;

WHEREAS, the United States does not have a water management system that is equivalent to those of the Western States for the appropriation, use or distribution of water; and

- WHEREAS, Congress has consistently recognized the primacy of state water law because of the need for comprehensive water management systems tailored to the unique needs and characteristics of the individual states; and
- WHEREAS, Congress enacted the McCarran Amendment, 43 U.S.C. § 666, to allow the joinder of the United States in state general stream adjudications, and Congress intended the United States to be subject to the same procedures as all other water right claimants joined in state general stream adjudications; and
- WHEREAS, many of the Western States are conducting general stream adjudications for the purpose of quantifying all water right claims in accordance with the McCarran Amendment; and
- WHEREAS, the United States is often the largest claimant of water rights in these general stream adjudications, and the adjudication of Federal water right claims requires a large commitment of time, effort and resources by the state courts and by state agencies; and
- WHEREAS, the adjudication of water rights claims is absolutely essential for the orderly allocation of water in all the Western States where state law is based on the prior appropriation doctrine; and
- WHEREAS, many of the Western States' general stream adjudication procedures require claimants to pay a fee to offset the states' expenses arising from state general stream adjudications; and
- WHEREAS, citing to *United States v. Idaho* the United States claims immunity from the payment of adjudication filing fees required of all other claimants to offset the state's judicial and administrative expenses in conducting general stream adjudications; and
- WHEREAS, for the United States to be immune from sharing in the expenses of these proceedings constitutes an unfunded Federal mandate to the states; and
- WHEREAS, the United States contends that it cannot be joined in state administrative or judicial proceedings with respect to water rights it has acquired under state law other than pursuant to the McCarran Amendment, 43 U.S.C. § 666; and
- WHEREAS, it is inefficient and wasteful to require that a separate lawsuit be commenced for the sole purpose of regulating water rights acquired by the United States under state law; and
- WHEREAS, the United States claims it is also immune from paying fees to states that are required of all other water users for the appropriation, use or distribution of water; and
- WHEREAS, equity and fairness dictate that Federal agencies who voluntarily seek to appropriate water pursuant to state law, or who acquire water rights based on state law, should be required to comply with state law, including the payment of fees, to the same extent as all other persons.
- NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports passage of legislation that at a minimum provides for the following:
1. Requires the Federal Government to participate in all state administrative and judicial proceedings with respect to water rights it acquires to the same extent as all other persons.
 2. Requires the Federal Government to pay filing fees (not Native American tribes) as well as comply with all other state substantive and procedural water right adjudication laws to the same extent as all other persons.
 3. Requires the Federal Government to pay applicable fees as well as comply with all other state substantive and procedural laws for the appropriation, use and distribution of water rights to the same extent as all other persons.
 4. Provides for state administration of all water rights.
- BE IT FURTHER RESOLVED that the Western States Water Council also urges Congress to appropriate moneys for payment of unpaid fees to states that have incurred expenses as a result of processing Federal claims or Federal objections to private claims in state general stream adjudications.
- BE IT FURTHER RESOLVED that the Western States Water Council shall send a copy of this resolution to the congressional delegations representing the states and territories who are members of the Western States Water Council, to President George W. Bush, and to the President Pro-Tem of the United States Senate and the Speaker of the United States House of Representatives.

POSITION OF THE WESTERN STATES WATER COUNCIL

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection and management issues, and our member

states and political subdivisions have long been partners in cooperative Federal water and climate data collection and analysis program; and

WHEREAS, in the West, water is a critical, vital resource (much of which originates from mountain snows) and sound decision making demands accurate and timely data on precipitation, temperature, soil moisture, snow depth, snow water content, streamflow, and similar information; and

WHEREAS, the demands for water and related climate data continue to increase along with our population and this information is used by Federal, state, tribal and local government agencies and private entities and individuals to forecast flooding and drought, and project future water supplies for agricultural and municipal and industrial uses, hydropower production, recreation, and environmental purposes, such as fish and wildlife management, including water for endangered species needs; and

WHEREAS, without timely and accurate information, human life, health, welfare, property and environmental and natural resources are at considerably greater risk of loss; and

WHEREAS, critical, vital information is gathered and disseminated through the Snow Survey and Water Supply Forecasting Program, administered by the National Water and Climate Center (NWCC) in Portland, Oregon and funded through USDA's Natural Resources Conservation Service (NRCS), while equally essential data on streamflows is gathered and disseminated through the U.S. Geological Survey's Cooperative Streamgaging Program and National Streamflow Information Program, which is funded through the Department of Interior; and

WHEREAS, over a number of years, Federal appropriations have not kept up with increasing program costs and/or matching non-Federal contributions, and this erosion in funding has led or will lead to the discontinuance, disrepair and obsolescence of a significant number of manual snow courses, automated SNOTEL (SNOWTElemetry) sites, and streamgages; and

WHEREAS, state-of-art technology has been developed to provide real or near real-time data with the potential to vastly improve the water-related information available to decision makers in natural resources and emergency management, and thus better protect the public safety, welfare and the environment; and

WHEREAS, there is a serious need for adequate and consistent Federal funding to maintain, restore, modernize, and provide for targeted expansion of NWCC's SNOTEL System and Soil and Climate Analysis Network (SCAN), and USGS's Cooperative Streamgaging Program and National Streamflow Information Program, with a primary focus on coordinated data collection and dissemination.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to give a high priority to the allocation and appropriation of sufficient funds for these critical, vital programs which benefit so many, yet have been or are being allowed to erode to the point that it threatens the quantity and quality of basic data provided to a myriad, growing and diffuse number of decision makers and stakeholders, with significantly adverse consequences.

WESTERN STATES WATER COUNCIL

APRIL 2, 2002

The Honorable Joe Skeen, Chairman
 Subcommittee on Interior and Related Agencies
 Washington, DC 20515

Dear Mr. Chairman:

On behalf of the Western States Water Council, representing the governors of eighteen states, I am writing to request your support for placing a high priority on funding for U.S. Geological Survey (USGS) streamgaging programs. The Administration's reduced request for the National Streamgaging Information Program (NSIP) would eliminate Federal funding for some 130 streamgages and likely result in the loss of important data during a drought year. We would urge the Committee to appropriate \$14.3 million for NSIP, the same as in Fiscal Year 2002.

Under the Cooperative Water Program, a longstanding state/Federal streamgaging partnership, our member states have worked closely with the USGS. The Administration has asked for \$64,339,000 for this program, a \$21,000 increase,

but it is not enough to cover inflation and other cost increases. Moreover, this was originally a 50%–50% fund-matching program, but cooperator contributions (primarily state and local government spending) have increased faster than available USGS monies. In 2001, cooperators contributed \$123.2 million or two-thirds of the \$185.9 million program cost. We would ask the Committee to add \$2 million to the President's request, for a total of \$66.34 million, to help better balance program funding.

Given the dire budget conditions in many states and the slow erosion in the Cooperative Program spending, without these increases, states may be forced to drop partnered gages, adding to the loss of the NSIP streamgages. The result would be a significant loss of increasingly vital basic water data that is critical to myriad government agencies at all levels and other private entities that must base decisions related to drought, water supply, flood warning, water quality, energy production, recreation, fish and wildlife habitat management and environmental protection on the best science available. We believe that data collection and dissemination is the most important element of the USGS water resources program. The highest priority should be placed on maintaining and strengthening the existing USGS streamgaging network, particularly the cooperative partnership with the states.

SINCERELY,

MICHAEL J. BROPHY, CHAIRMAN

WESTERN STATES WATER COUNCIL

[A statement submitted for the record on H.R. 4638 by John Steele, President, Oglala Sioux Tribe, Pine Ridge Indian Reservation, follows:]

Statement of John Steele, President, Oglala Sioux Tribe, Pine Ridge Indian Reservation, South Dakota, on H.R. 4638

This testimony has been developed conjunctively and is offered on behalf of the Oglala Sioux Tribe, West River/Lyman–Jones, Inc., the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe, the four beneficiaries and sponsors of the Mni Wiconi Rural Water Supply System in southwestern South Dakota. H.R. 4638, a re-authorization of the Mni Wiconi Project, will increase project funding by \$58.8 million (October 1997 dollars) and extend the completion of the project to 2008. The sponsors, individually and collectively, support H.R. 4638 and seek support from the Subcommittee.

Background

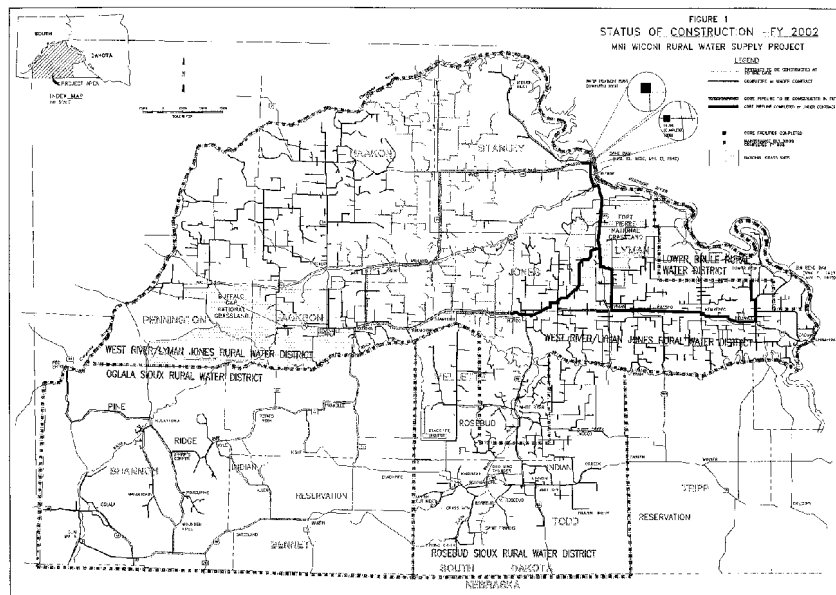
The Mni Wiconi Project Act of 1988 (Public Law 100–516) authorized and directed the Secretary of the Interior to construct the Mni Wiconi Rural Water Supply Project to provide a safe and adequate municipal, rural, and industrial water supply to both Indian and non-Indian residents of South Dakota. Initially, the Project included the Oglala Sioux Rural Water Supply System (OSRWSS), the West River Rural Water System, and the Lyman–Jones Rural Water System. In 1994, the West River and the Lyman–Jones Systems were merged into one system, known as the West River/Lyman–Jones Rural Water System. The Mni Wiconi Act Amendments of 1994 (Public Law 103–434, Title 8) added the Rosebud Sioux and the Lower Brule Sioux Rural Water Systems to serve the respective reservations, thereby increasing the number of Project “sponsors” to four. The amendments also raised the authorized appropriation ceiling for the Project from \$87.5 to \$263.2 million, subject to cost indexing, and provided that the systems would generally be constructed in accordance with the Project's Final Engineering Report, dated May 1993.

The overall Project includes a water treatment plant, 4,500 miles of pipeline, 60 booster pump stations, and 35 water storage reservoirs. The Project will ultimately serve more than 52,000 people, including more than 40,000 on the three Indian reservations.

Current Status of Construction and Funding

The following is the average Federal funding need to complete the project in Fiscal Year 2008. Figure 1 shows the location of the project and the current status of construction.

Total Federal Required	\$ 391,091,000
Federal Spent Through FY 2002	\$ 213,384,726
% Spent	54.56%
Amount Remaining	\$ 177,706,274
Average Required for FY 2008 Finish	\$ 29,617,712



The Project has a total estimated cost (October 2000 dollars) of \$411 million according to the most recent master plan. Federal funding requirements for the project are \$391 million, including the \$58.8 million proposed by H.R. 4638. The total amount spent from Federal funds is \$213.4 million, 54.56% of the total Federal requirement. Most non-Federal funds for the project have already been expended. The amount remaining in Federal funds to complete the project is \$177.7 million, which will require an average annual appropriation through Fiscal Year 2008 of \$29.6 million (October 2001 dollars). If cost indexing at 3% is taken into account between Fiscal Year 2002 and Fiscal Year 2008, the average indexed funding requirement is \$34.9 million annually.

The sponsors are extremely pleased to report to the Subcommittee that the OSRWSS water treatment plant on the Missouri River near Fort Pierre, South Dakota, is fully operational and will deliver treated water on a sustained and dependable basis during Fiscal Year 2002 and thereafter. By the end of the 2002 calendar year, large diameter OSRWSS core pipelines (24 inch) will have been constructed from the water treatment plant to Vivian and Murdo, a distance of over 100 miles. The completion of these critical segments of the core pipeline will permit the Lower Brule Sioux Tribe to interconnect at Vivian and allow the immediate delivery of water to large areas of West River/Lyman-Jones. Over a period of several years, Lower Brule will complete its core system into the Reservation. The Rosebud Sioux Tribe and other parts of West River/Lyman-Jones will interconnect at Murdo, allowing over 50% of the design population have access to Missouri River water from the OSRWSS core pipelines at the 2002 level of completion.

The project now has the most significant project components completed and can conclude the project in a timely manner given the amendment of the project ceiling as proposed by H.R. 4638 and adequate appropriations in fiscal years 2003 through

2008. The degree of poverty and need to improve the drinking water in the sponsors' areas are set forth in greater detail in the next section of this statement. The statistics underscore the importance of this project and the necessity for a timely completion.

Attention is directed to the fact that the Pine Ridge Indian Reservation and the western portion of the West River/Lyman-Jones service areas are the furthest from the water treatment plant on the Missouri River. These areas will be served last, and it is crucial that the project is funded adequately and timely over the next six years to serve the remaining 50% of the project design population (Figure 1).

Unique Needs of This Project

This project covers much of the area of western South Dakota that was formerly the Great Sioux Reservation established by the Treaty of 1868. Since the separation of the Reservation in 1889 into smaller, more isolated reservations, including Pine Ridge, Rosebud and Lower Brule, tensions between the Indian population and the non-Indian settlers on former Great Sioux lands has been high with little easing by successive generations. The Mni Wiconi Project is perhaps the most significant opportunity in more than a century to bring the sharply diverse cultures of the two societies together for a common good. Much progress has been made due to the good faith and genuine efforts of both the Indian and non-Indian sponsors. The project is an historic basis for renewed hope, dignity and improvement in quality of life among the Indian people. It has been a basis for substantive improvement in relationships.

The project beneficiaries, particularly the three Indian Reservations, have the lowest income levels in the Nation. The health risks to the Indian people from drinking unsafe water are compounded by reductions in health programs. It is respectfully submitted that the project is unique and that no other project in the Nation has greater human needs. Poverty in the Indian service areas is consistently deeper than elsewhere in the Nation. Health effects of water borne diseases are consistently more prevalent than elsewhere in the Nation, due in part to (1) lack of adequate water in the home and (2) poor water quality where water is available. Higher incidences of impetigo, gastroenteritis, shigellosis, scabies and hepatitis-A are well documented on the Indian reservations of the Mni Wiconi Project area although improvements have been noted since the initial delivery of good water beginning in 1994. At the beginning of the third millennium one cannot find a region in our Nation in which social and economic conditions are as deplorable. These circumstances are summarized in Table 1. Mni Wiconi builds the dignity of many, not only through improvement of drinking water, but also through direct employment and increased earnings during planning, construction, operation and maintenance and from economic enterprises supplied with project water. The Subcommittee is urged to consider the need for creating jobs and improving the quality of life on the Pine Ridge, Lower Brule and Rosebud Indian Reservations of the project area.

TABLE 1

1990 BUREAU OF CENSUS ECONOMIC STATISTICS^a

Indian Reservation/State	Per Capita Income	Families Below Poverty Level	Unemployment
	(\$)	(%)	(%)
Pine Ridge (Shannon County)	\$3,029	59.6	32.7
Rosebud (Todd County)	4,005	54.4	27.3
Lower Brule (Lyman County)	4,679	45.0	15.7
State of South Dakota	10,661	11.6	4.2
National	14,420	10.0	6.3

Employment and earnings among the Indian people of the project area are expected to positively impact the high costs of health-care borne by the United States and the Tribes. OSRWSS data suggest clear relationships between income levels and Federal costs for heart disease, cancer and diabetes.

It is believed that the Subcommittee will share the shock of the sponsors with respect to future health care costs associated with poverty and the extremely high mortality rates of Indian people in the Great Plains. OSRWSS has found that an extra \$0.8 to \$1.6 billion (present value of 50 years of future health-care) will be required for each 24,000 members of the Indian population in the Mni Wiconi Project (relative to the non-Indian population). This is not total costs of health care, it is the extra cost of health care. A task force to thoroughly study this matter with the objective of taking corrective action is needed.

The Oglala Sioux Rural Water Supply System is a part of the solution to lower incidence of these diseases. It brings much needed employment, which, in turn, en-

gages part of our unemployed and brings about some measurable improvement in the health of the Lakota Nation. It will help reduce Federal health-care costs and, most of all, the tragedy in the families affected. Support for the additional funds needed for completion of the project and acceleration of the Project in the Administration's budget will be invaluable.

Financial support for the Indian membership has already been subjected to drastic cuts in funding programs through the Bureau of Indian Affairs. This project is a source of strong hope that helps offset the loss of employment and income in other programs and provide for an improvement in health and welfare. Welfare Reform legislation and other budget cuts nation-wide have created a crisis for tribal government by forcing tribal members back to the reservations simply to survive. Recent Census Bureau data indicate that the population of Shannon County (Pine Ridge Indian Reservation) increased over 24% between 1990 and 2000. The populations of the Rosebud and Lower Brule Indian Reservations have also continued to grow. Economic conditions have clearly resulted in accelerated population growth on the reservations. The Mni Wiconi Project Act declares that the United States will work with us under the circumstances:

...the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply and public health needs of the Pine Ridge, Rosebud and Lower Brule Indian Reservations...

Indian support for this project has not come easily because the historical experience of broken commitments to the Indian people by the Federal Government is difficult to overcome. The argument was that there is no reason to trust and that the Sioux Tribes are being used to build the non-Indian segments of the project: that the Indian segments will linger uncompleted. This argument has been overcome by better planning, an amended authorization and solid agreements and relationships among the parties. The Subcommittee is respectfully requested to take cognizance of the need to complete the project to maintain the faith of the Indian people.

The Mni Wiconi sponsors have worked especially hard to implement cost controls and to minimize the increase in the authorization required to finish this valuable project. There has been every effort to comply with cost reduction measures, and the sponsors trust that others will find that actions and decisions have been genuine, comprehensive and effective.

Components of Additional Cost

Before fully reviewing the components of the increase of \$58.8 million in the project ceiling, the sponsors are in complete agreement that the Bureau of Reclamation has worked with us in a thoroughly cooperative and effective manner throughout the project. In preparation of the cost estimates for H.R. 4638, the Bureau of Reclamation worked closely with the sponsors. Agreement was reached on the causes of the cost increases, the steps to be taken to control and limit future costs, and on reconfiguration of the OSRWSS core system. Table 2 summarizes the factors requiring amendment of the project ceiling and the amounts of additional costs.

TABLE 2
DETAILS OF INCREASE IN PROJECT CEILING
(October 1997 \$)

Item	OSRWSS		WRLJ	Rosebud	Lower Brule	Total
	Core	Distribution				
Not Included in FER						
Added Years Administration	\$ 2,458,000	\$ 2,675,000	\$ 1,549,000	\$ 2,443,000	\$ 1,016,000	\$ 10,141,000
Operation and Maintenance Buildings	-	6,681,000	988,000	1,098,000	1,044,000	8,811,000
Other Construction	-	4,723,000	-	433,000	4,845,000	10,001,000
Features Bid Higher Than FER Estimates	23,508,000	8,920,000	-	-	1,199,000	33,625,000
Savings Proposed By Sponsors						
Federal Procurement	(140,000)	(110,000)		(60,000)	(10,000)	(320,000)
Reconfiguration	(5,502,000)					(5,502,000)
Total Costs	\$ 20,322,000	\$ 22,889,000	\$ 2,537,000	\$ 3,914,000	\$ 8,094,000	\$ 57,756,000

factors requiring amendment of the project ceiling and the amounts of additional costs.

Factors contributing to increases in cost include items not originally contemplated in the Final Engineering Report (FER) upon which the project costs were based. These include extension of the project completion date from 2003 to 2008 and the associated costs of administration. Operation and maintenance buildings were required that were not originally included in the project costs. Moreover, facilities were approved and constructed that were not part of the original plan formulation, but were subsequently determined necessary due to change in circumstances.

Bid prices, particularly on the OSRWSS core and distribution system on the Pine Ridge Indian Reservation, were received at higher prices than contemplated in the FER. The Reservation is the most remote area in the project, the number of bids received was generally low (whether for the OSRWSS core or distribution system) and bid prices by contractors reflected a higher level of risk. Moreover, criteria used in common by all sponsors for estimating minor construction items, did not adequately reflect the requirements for the OSRWSS core (Table 2).

OSRWSS and the other sponsors agreed to a reconfiguration of the OSRWSS core that resulted in an estimated savings of \$5.5 million. Federal procurement processes were improved but have less impact on savings than the reconfiguration of the OSRWSS core. The total costs of \$57.8 million in Table 2 were later adjusted to the \$58.8 million in H.R. 4638.

It is important to review of the project design criteria based on the 1990 Census of Population in the FER and the subsequent population count by the Bureau of Census for 2000. A factor in the cost of additional construction on the Pine Ridge Indian Reservation was an accelerated growth rate. Population on Pine Ridge has grown at an estimated annual rate of 2.18% as contrasted with the design rate of growth of 1.65%, an increase of 32% in the growth rate. By year 2020, little more than a decade after project completion, the design population on Pine Ridge will have reached 24,560 persons, 17% greater than the 21,000 persons projected in the FER by the same date. Stated differently, if current growth rates are sustained, the design capacities for Pine Ridge will be exceeded in years 2011 and 2012, respectively, 3 to 4 years after the scheduled completion of construction. The population of other service areas is growing but more in accord with original projections. The increase in population on Pine Ridge is believed to stem in large part from the availability of a new source of safe and adequate water as well as new opportunities for earnings and employment associated with the project.

On each of the Indian Reservations in the project: Pine Ridge, Rosebud and Lower Brule, population estimates prepared by the Bureau of Indian Affairs argue for higher population than estimated by the Bureau of Census. Therefore, numbers of persons residing on the reservations may significantly exceed the numbers presented here, and the ability of the project to serve a future population may be more important than currently found.

Reconfiguration, as agreed-upon by the sponsors and the Bureau of Reclamation, provides for a northern and southern pipeline in the OSRWSS core with pipe sizes meeting FER design requirements but with some excess capacity for the following reasons: (1) along the northern route, a pipe size between 10" and 12" is required between the water treatment plant and Philip Junction, and 12 inches would be provided; and (2) along the southern route, a pipeline between 20" and 24" would be required from the water treatment plant to Murdo, and 24" would be provided. The Oglala Sioux Tribe needs a core transmission system with capability to deliver water through the southern and northern OSRWSS core as defined in the FER. Reconfiguration supports the projections of project population based on the 2000 Census.

Sicangu Mni Wiconi (Rosebud Indian Reservation)

The Sicangu Mni Wiconi- Rosebud Sioux Rural Water System was not included in the original Mni Wiconi Act. Nine years ago an amendment was introduced to add Rosebud and Lower Brule to the Project and make other modifications to the legislation. That amendment, enacted as part of P.L. 103-434, and the amendment introduced this year illustrates the commitment of the project sponsors, the Congress and Administration to improving the quality of life for thousands of South Dakotans on three Indian Reservations and beyond.

While much of the population of the project area still endures with some of the poorest water quality and lowest income levels in the Nation, Mni Wiconi has made a big difference to the lives of many. In 1997 and 1998 the Rosebud Sioux Tribe worked with West River/Lyman-Jones to bring high quality water to Horse Creek, Swift Bear and White River. Indians and non-Indians alike now have a reliable source of high quality water and schools in White River no longer have to close because of a lack of water. Other success stories abound in the area served by the Mni Wiconi.

For Rosebud the present amendment is needed primarily to extend the sunset date and address facilities not contemplated in the FER. For other project sponsors the amendment is more critical. The amendment is needed to construct the reservation distribution system for Lower Brule and the north loop of OSRWSS. These facilities are needed to meet critical needs at Lower Brule and in the WR/LJ service areas. On behalf of the thousands of people who have yet to benefit from Mni Wiconi and who will not benefit without passage of this amendment, the Rosebud Sioux

Tribe seeks your support. It is also urged that the Subcommittee bear in mind that legislation is seldom complete and perfect and one cannot rule out additional modifications that may be needed to meet our objective of providing equal benefits to all of the Sicangu Oyate in our Primary and Secondary Service Areas.

Lower Brule

The Lower Brule Rural Water System has demonstrated its ability to manage and maintain their portion of the project with the tremendous amount of progress accomplished over the last few years. A state-of-the-art microfiltration water treatment plant was constructed and placed into operation in December 1999. The completion of this plant has not only benefited the users of the LBRWS but also allowed the provision of high quality water to a significant number of users of the West River/Lyman Jones (WR/LJ) Rural Water System from Oacoma to Draper.

The provision of water to WR/LJ RWS and its users has been a very rewarding experience. The cooperation and communication between the two systems, especially the operation and maintenance personnel, has been exceptional and has thus led to the successful delivery of high quality water to users on both systems. As a result, much of the apprehension that was felt prior to this supply of water has turned to praise.

LBRWS has committed current funding for the construction of the last segment of LBRWS core pipeline between Kennebec and Reliance during the 2002 construction season. This will result in the core pipeline from Vivian to Reliance serving WR/LJ service areas along the pipeline and the cities of Vivian, Presho and Kennebec.

The inclusion of Lower Brule in the Mni Wiconi Project occurred late in the process. Consequently, facilities and associated cost in the Final Engineering Report for Lower Brule were not nor could not be based on a thorough evaluation of the required facilities for Lower Brule's portion of the project. Upon initiation of the project, LBRWS quickly realized that the original estimated cost was severely underestimated. This need for additional funds was also confirmed in the Bureau of Reclamation's Cost Containment Report and the OIG Audit.

The major items affecting the cost increase for Lower Brule are the pipe sizes and unit costs for the core pipeline; pipe sizes, quantities (The current total footage includes 510,200 feet for pasture taps. Much of this quantity may not have been in the FER cost estimate) and unit costs for the distribution system; there is a decrease in the estimated cost of pump stations; costs for reservoirs are substantially higher; and the costs the water treatment plant and administration building were not included in the FER.

Another factor affecting Lower Brule's cost was the initial distribution of the appropriated funds. During the first years the project received funds, the funds were distributed based on a percentage of the sponsors' overall portion of the project. As such, the amount of money received by Lower Brule on a yearly basis (\$500,000–\$700,000) was not sufficient to fund a worthwhile segment of the project. The funds needed to be accumulated over a period of years. This not only affected construction costs but also significantly increased the cost of administration as a percentage of the construction costs.

Primarily, as a result of the underestimated cost in the FER, the LBRWS has received the extent of the funding designated for its portion of the project with the receipt of the 2001 funds. The LBRWS with the support of the other sponsors is proceeding with the optimism that the amendment will be approved in a time frame that will not impact the progress currently being made. To that extent, LBRWS has received \$1,450,000 in Fiscal Year 2002 funds for the Kennebec to Reliance segment of core pipeline and is requesting \$3,091,000 in Fiscal Year 2003 funds for the Fort Hale, Medicine Butte North and Kennebec North - Medicine Creek distribution systems. This will be the initiation of the on-Reservation distribution system and thereby provide service to on-Reservation users.

If the amendment is not passed, the continued support of the other sponsors to designate funds for Lower Brule's portion cannot be expected. Therefore, it is crucial to the continued success of Lower Brule and the Mni Wiconi Project as a whole that the proposed amendment is passed.

